TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 449.

EBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES ET AL., PLAINTIFFS IN ERROR,

vs.

AMUEL R. McKELVIE, CLARENCE A. DAVIS, OTTO F. WALTER, AND THEIR DEPUTIES, SUBORDINATES, AND ASSISTANTS.

ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

FILED JUNE 23, 1922.

(26,990)

(28,990)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 440.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES ET AL., PLAINTIFFS IN ERROR,

vs.

SAMUEL R. McKELVIE, CLARENCE A. DAVIS, OTTO F. WALTER, AND THEIR DEPUTIES, SUBORDINATES, AND ASSISTANTS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 5, 1922.

1 No. 22424.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI,

v.

MCKELVIE.

Pleas Before the Supreme Court of the State of Nebraska at a Term Thereof Begun and Holden at the Capitol, in the City of Lincoln, in said State, on the 2d Day of January, 1922.

Present:

Hon. Andrew M. Morrissey, Chief Justice.
Hon. Charles B. Letton, Judge.
Hon. William B. Rose, Judge.
Hon. James R. Dean, Judge.
Hon. Chester H. Aldrich, Judge.
Hon. George A. Day, Judge.
Hon. Leonard A. Flansburg, Judge.

Attest:

H. C. LINDSAY,
Clerk.

Be it remembered, That on October 22, 1921, there was filed in the office of the clerk of the Supreme Court of Nebraska in the above entitled case, a certain Transcript from the District Court of Platte County, Nebraska, and the following are true and correct copies of such portions thereof as have been requested in the original Præcipes attached hereto for this record to be made a part of the return to the writ of error in the proceedings to review said cause in the Supreme Court of the United States:

2 STATE OF NEBRASKA,
Platte County, ss:

Pleas before the District Court of the County of Platte, State of Nebraska, at a term begun and held in the said County of Platte on the 4th day of April, A. D. 1921, and at subsequent terms of said District Court held in the said County of Platte, before Hon. Frederic W. Button, Judge of said District Court.

No. 5055.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF Missouri, Ohio, and Other States and Diederick Siefken, Plaintiffs,

vs.

SAMUEL R. MCKELVIE, CLARENCE R. DAVIS, and OTTO F. WALTER and Their Deputies, Subordinates, and Assistants, Defendants.

3 Be it remembered, That heretofore, to-wit: On the 28th day of May, 1921, a Petition was filed in the office of the Clerk of the District Court of Platte County, Nebraska, in the words and figures following, to-wit:

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF Missouri, Ohio, and Other States and Diederick Siefken, Plaintiffs,

vs.

SAMUEL R. MCKELVIE, CLARENCE R. DAVIS, and OTTO F. WALTER and Their Deputies, Subordinates, and Assistants, Defendants.

Petition.

The plaintiffs, suing in their own behalf and on behalf of all others similarly situated, and injuriously affected by the legislative act hereinafter mentioned, for their cause of action against the defendants allege:

I.

That the plaintiff, said Nebraska District of said Synod, hereinafter called first party plaintiff, is and for more than twenty years last past has been, a corporation duly organized, existing under and by virtue of the laws of Nebraska, having for its object the spread of the gospel and promotion of religion, morality and education in acordance with the canons, tenets, usages and practices of the Lutheran Church of America.

II.

That in pursuance of its said purpose, the first party plaintiff has established and now supports and maintains in the state of Ne-

braska more than four hundred (400) congregations or parishes, with twenty-six thousand (26,000) communicants, two hundred (200) parochial schools with pupils thereof numbering six thousand (6,000) or upward, and has erected and now owns, keeps and maintains school buildings and grounds in said state devoted exclusively to aforesaid purposes exceeding two hundred and
4 fifty thousand dollars ($250,000) in value, some of which said schools are located in Platte County under competent instructors, and the grades whereof conform to the grades of the public schools of said county, and the course of study in secular branches is identical with and in all respects equal to that of said public schools and is, and for many years has been, engaged in missionary work and in preaching, carrying and spreading the Christian religion as understood and taught by said church throughout the state of Nebraska, expecially among those of foreign birth in need of spiritual guidance, instruction and consolation, and the affairs of the said several congregations or parishes and schools are managed by local boards of trustees, consisting of three or more members, aided, advised and assisted by their respective pastors, who assemble at stated times and when called together for the transaction of business of their respective congregations and organizations at which meetings questions pertaining to the said business are raised, discussed and voted upon by the several members of such boards.

III.

That each of said congregations is under the spiritual guidance and direction of a pastor educated in the canons, doctrines and tenets of said church and thereunto duly ordained and authorized by the said church to teach and preach the gospel as understood, taught and practiced by the said church, and to instruct and prepare persons for admission as members into said church and their respective congregations.

IV.

That among the duties enjoined by said church upon its members is to assemble with the members of their families and attend at stated period- religious services conducted therein consisting of sermons, instruction in matters of faith and religion, and other religious exercises by the said pastors, to conduct devotional exercises in their homes, to cooperate with their pastors in instructing, advising and admonishing their children and members of
5 their families in matters of religion and morals, and to rear them in accordance with the teachings of said church, and with a knowledge of the faith, commandments, doctrines and practices thereof, and in preparing them for admission to membership in said church.

V.

That a large percentage of the members of the several congregations aforesaid, and the said boards of trustees, and the people of foreign birth among whom the first party plaintiff is engaged in missionary work as aforesaid, and their families have insufficient knowledge of the English language to receive or impart instruction in matters of religion and morals in that tongue, or to conduct or participate understandingly in religious services and devotional exercises conducted therein, or in the transaction of business by said local board, or in any language other than German, many of whom are parents of families who have reached an age where it is impossible for them to acquire a sufficient knowledge of English to enable them to receive or impart religious instruction in that language and in order that such parents may be able to counsel, admonish, and instruct their children in matters of religion and morals, and that such parents and their families may keep in touch with each other in such matters and all participate intelligently in the religious services and exercises of the church and home, this plaintiff has taught and still continues to teach the German language in its said schools to pupils under the ninth grade, concurrently with the English language, but avers that for several years last past it has been and still is its purpose and settled policy to abolish the use of all languages other than English in its religious services and instruction at the earliest rate consistent with the preservation of the bonds between the parents and children of its said congregations in matters of faith and morals and that pursuant to this policy, it has caused
the use of the German language to be abandoned in more
6 than ten per cent of its said congregations and schools, and
in the rema-ing schools said language is taught and employed only to instruct the pupils in matters of religion and morals to enable them to converse with their parents in such matters and join with them understandingly in the same religious services and exercises.

VI.

That the plaintiff, Diederick Siefken, hereinafter called second party plaintiff, is, and for more than five years last past, has been a citizen of the United States, a resident of the city of Columbus, and State of Nebraska, a married man and the head of a family, a member of an organized congregation of the said Lutheran Church in said city, and a patron of the said school so as aforesaid kept and maintained therein, erected, kept and supported and maintained by the members of the said church and the income derived therefrom from tuition paid by the pupils attending the same; and that this plaintiff has a child twelve years of age, who is, and for more than two years last past has been a pupil in said school in said city, but has not completed her education in the German language, and it is the wish and the intention of this plaintiff that his said child shall continue as a pupil therein and take therein instructions

in the German language in such a way and for such time as will enable her to speak, read and write said language correctly and enable her to converse and communicate with her parents and other members of said congregation in said language intelligently, and that the said school is in charge of a teacher th-roughly qualified to teach the said language and any of the branches required to be taught to pupils in the public schools of Nebraska, and is able, ready and willing to give such instructions to the plaintiff's said child, unless thereunto prevented, as hereinafter set forth.

VII.

That at the regular session of the legislature of the state of Nebraska in the year 1921, an act was passed by said body and
7 approved by the Gove-nor of said state, which, including the title thereto, is in the words and figures following, to wit:

"A bill for an Act to declare the English language the official language of this state, and to require all official proceedings, records and publications to be in such language and all school branches to be taught in said language in public, private, denominational and parochial schools; to prohibit discrimination against the use of the English language by social, religious or commercial organizations; to provide a penalty for a violation thereof; to repeal Chapter 249 of the Session Laws of Nebraska for 1919, entitled —'An Act relating to the teaching of foreign languages in the state of Nebraska' and to declare an emergency.

Be it enacted by the people of the State of Nebraska:

Section 1. The English language is hereby declared to be the official language of this state, and all official proceedings, records and publications shall be in such language, and the common school branches shall be taught in said language in public, private, denominational and parochial schools.

Sec. 2. No person, individually or as a teacher, shall, in any private, denominational, or parochial or public school, teach any subject to any person in any language other than the English language.

Sec. 3. Languages other than the English language may be taught as languages only, after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county or the city superintendent of the city in which the child resides. Provided, that the provisions of this act shall not apply to schools held on Sunday or on some other day of the week which those having the care and custody of the pupils attending same conscientiously
8 observe as the Sabbath, where the object and purpose of such schools is the giving of religious instruction, but shall apply to all other schools and to schools held at all other times. Provided that nothing in this act shall prohibit any person from teaching his own children in his own home any foreign language.

Sec. 4. It shall be unlawful for any organization whether social, religious or commercial, to prohibit, forbid or discriminate against the use of the English language in any meeting, school or proceeding, and for any officer, director, member or person in authority in any organization to pass, promulgate, connive at, publish, enforce or attempt to enforce any such prohibition or discrimination.

Sec. 5. Any public official, teacher, instructor, or other person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof be fined in any sum not exceeding one hundred ($100.00) dollars or less than twenty-five ($25.00) dollars, or be confined in the county jail for a period not exceeding thirty days for each offense.

Sec. 6. Should the courts declare any portion of this act unconstitutional such decision shall effect only the portion so declared to be unconstitutional and shall not effect any other section or any other part of this act, and it is further provided that each part of this act, so far as an inducement for the passage of this act is concerned is independent of every other part.

Sec. 7. Chapter 249, of the Session Laws of Nebraska for 1919, entitled, 'An Act relating to the teaching of foreign languages in the State of Nebraska,' is hereby repealed.

Sec. 8. Whereas, an emergency exists this act shall be in force from and after its passage and approval."

VIII.

That the said schools so as aforesaid maintained and con-
9 ducted by the first party plaintiff and the said congregations have established and enjoy, and the first party plaintiff and said congregations now own the good will in connection therewith of great value, to wit: not less than fifty thousand dollars ($50,000.00), and that the efficiency of the said schools and the value of the said good will is due to and dependent to a large degree upon the course and method of instruction hereinbefore mentioned in respect to the teaching and use of languages other than English therein as hereinbefore specified and in teaching such other languages therein to pupils below the ninth grade, and in giving instruction in languages other than English to pupils, and that the enforcement of the said act would so operate to impair the efficiency of the said schools and to defeat their purpose that the said good will would be thereby greatly depreciated and destroyed.

IX.

That the enforcement of the sections, 2, 3, 4, and 5, or any of them, of said act would greatly interfere with, hinder and impede the work of the plaintiffs in the spread of the gospel in the State of Nebraska and in the said missionary work and in the conduct of the business of the said congregations and would operate to prevent

the first party plaintiff and others similarly situated from imparting religious instruction and ministering to the spiritual wants of persons who do not speak or understand the English language, and from fitting and preparing its pastors and assistants for the discharge of their duties in the premises, and to prevent such of its pastors and assistants who have been educated in a foreign language and who are not sufficiently acquainted with the English language to preach or impart religious instruction in such language, from preaching or teaching and discharging their duties to the said church, and to deprive said first party plaintiff and its said pastors and all others similarly situated, of exercise of the right of
10 free speech, their religious liberty, and of their liberty and property, without due process of law, to deny to them the equal protection of the law, and to retard, hinder and discourage religion, morality and education, and is an unjust and unreasonable restraint upon liberty of the plaintiffs, its officers, pastors, teachers and agents, and all others similarly situated, and is in contravention of the constitution of the state of Nebraska and the constitution of the United States, and null and void. Amendment. And the plaintiffs further allege that sections 1 and 2 of said act are unconstitutional, null and void for the further reason that the provisions thereof, nor any of them, are embraced or included in the title to said act.

X.

That the defendant, Samuel R. McKelvie, is the duly elected and acting Governor, and the defendant, Clarence A. Davis, the attorney general of the state of Nebraska, and the defendant, Otto F. Walter, is the county attorney of the county of Platte of said state, and that the said defendants are severally threatening and intending to proceed under and by virtue of their respective offices to enforce the said sections 2, 3, 4, and 5 of said act, and to enforce the observance thereof by the plaintiffs, its pastors, officers and teachers, by causing the arrest and prosecution of the first party plaintiff's pastors, officers and agents, and the teachers so as aforesaid employed and kept by the first party plaintiff and said congregations, charging them severally with violating the provisions of said Act by instructing pupils below said ninth grade to speak and write the German language, and in languages other than English, and will carry their said threats into execution and cause said arrests to be made and said teachers prosecuted as aforesaid, unless enjoined and restrained by *by* this court, and by said means compel the plaintiff to cease so as aforesaid to instruct their said pupils on any subject in any lan-
guage other than English, or to teach or instruct their said
11 pupils under the said ninth grade to speak or write the said German language, thereby greatly impairing the usefulness and prestige of said schools and the value of its said property and dimi-shing its income therefrom, and in a material and substantial way deprive the first party plaintiff and its teachers, pastors, and officers, and parishioners, and the second party plaintiff of their

liberty and property, without due process of law, to the great and irreparable injury of the plaintiff and its said parishioners, for which the law affords them no adequate remedy.

Wherefore, plaintiffs pray for a temporary order, enjoining and restraining the defendants, their deputies and agents and all others acting under them respectively, and their successors in office, from enforcing any of the provisions of said act in any manner whatsoever, and that upon the final hearing herein it shall be adjudged and determined that the said act be adjudged and decreed to be unconstitutional, null and void, as being in violation of the provisions of the constitution of the United States and of the constitution of the state of Nebraska, and for such other and further relief as may be deemed equitable in the premises.

SANDALL & WRAY,
A. F. MULLEN,
ALBERT & WAGNER,
Attorneys for Plaintiffs.

STATE OF NEBRASKA,
Platte County, ss:

Diederick Siefken, being first duly sworn, deposes and says that he is one of the plaintiffs in the above entitled cause, that he has read the foregoing petition, knows the contents thereof, and that the allegations contained in said petition are true.

DIEDERICK SIEFKEN.

Subscribed in my presence and sworn to before me this 24 day of May, 1921.

[SEAL.] J. C. BYRNES,
Notary Public.

(Endorsed:) Filed May 28-1921. Ethel Gossard, Clerk.

12 And on the same day, to-wit: On May 28th, 1921, a Court Order was entered in said cause in the words and figures following, to-wit:

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO AND OTHER STATES et al., Plaintiff,

vs.

SAMUEL R. MCKELVIE, CLARENCE R. DAVIS and OTTO F. WALTER, and Their Deputies, Subordinates and Assistants, Defendants.

Order.

May 28, 1921.

Upon reading the petition of the plaintiff duly verified and for good cause shown, it is ordered that an injunction be granted herein enjoining the above named defendants, their deputies, subordinates,

ssistants, and all persons acting by, through or under them, from enforcing or attempting to enforce any of the provisions of Section- 2, 3, 4, and 5 of an Act purporting to have been enacted and passed by the 40th Session of the Legislature of the State of Nebraska, known as Senate *File* No. 160, entitled:

"A Bill for an Act to declare the English language the official language of this state, and to require all official proceedings, records and publications to be in such language and all school branches to be taught in said language in public, private, denominational and parochial schools; to prohibit discrimination against the use of the English language by social, religious or commercial organizations; to provide a penalty for a violation thereof; to repeal Chapter 249 of the Session Laws of Nebraska for 1919, entitled—'An Act relating to the teaching of Foreign languages in the State of Nebraska' and to declare an emergency."

until the further order of the court, upon the plaintiff's executing and delivering to the clerk of said court an undertaking to the defendants in the sum of $500.00, with approved sureties, conditioned as required by law.

FREDERICK W. BUTTON,
Judge.

13 And afterwards, to-wit: On June 16th, 1921, Petition of Intervention of John Siedlik was filed in said cause in the words and figures following, to-wit:

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, Ohio and Other States, and Diederick Siefken, Plaintiffs,

vs.

SAMUEL R. MCKELVIE, CLARENCE R. DAVIS and OTTO F. WALTER, and Their Deputies, Subordinates and Assistants, Defendants.

Petition of Intervention of John Siedlik.

Comes now John Siedlik and intervenes in this suit as a party plaintiff and joins with the plaintiffs in their application for the relief prayed for in their petition, and for cause of action alleges:

1. That the intervenor is a naturalized citizen of the United States, was born in Poland about thirty-nine years ago, and at the present time and for more than five years last past has been a resident taxpayer of Douglas County, Nebraska, and is a qualified voter and elector in the State of Nebraska.

2. That intervenor is now and for many years last past has been a member of St. Francis Parish in South Omaha, Nebraska, and is a communicant of the Roman Catholic Church.

3. That Intervenor has a family, consisting of his wife and four children; that intervenor's wife was born in Poland; that at the time intervenor came to this country he could not speak the English language; that the wife of this intervenor cannot speak the English language at the present time; that intervenor has acquired a working knowledge of the English language in so far as it relates to business and every day affairs; that in religious matters he has not acquired sufficient knowledge of the English language to either give or receive instructions in religion and morality in said
14 language; that the language used in his home is Polish; that all of the children in said home, in communicating with the intervenor and his wife, use the Polish language.

4. That it is the religious duty of this intervenor and his wife to instruct their children in religion and morals and that such instruction has been given and is now being given by this intervenor and his wife in said Polish language, and that it is impossible for this intervenor or his wife to give religious instruction to their children in any other language.

5. That intervenor, as a part of the plan of educating his children, has contributed to the erection and support of a parochial school in the aforesaid parish and is now and for more than five years last past has contributed to the support and maintenance of said school; that his children have attended and are now attending said school; that all of the expense of erecting, maintaining and supporting said school is borne by this intervenor and other persons of Polish birth or descent; that no part of the public revenues is used to support said school; that one of the reasons for maintaining said parochial school is to educate the children therein in matters of faith and morals and, in particular, in the doctrines and discipline of the Roman Catholic Church; that the course of study in said school, in so far as the secular branches are concerned, is substantially the equivalent of the public schools in the same community; that the purpose and object of said school is to educate and train the children to understand, speak and use the English language and to educate them so that they will be useful and competent citizens of the United States; that said school has a regular course of study and employs the English language in the instruction of the children, but, in addition thereto, in the lower grades, prior to the passage of the Act in question, taught the Polish language and gave religious instruc-
15 tion to the children in Polish; that the Polish language was used for the purpose of teaching the children English and to instruct said children in matters of religion and morality until said children had a working knowledge of the English language; that after said children had acquired a working knowledge of the English language no instruction was given either in the Polish language or in any subject in said language; that all the instruction given to the children in said school, after said children reach the seventh grade is given in the English language, and no Polish is used above the sixth grade; that the children who complete the regular work in said school have been admitted without examination to

the schools of the city of Omaha and other schools of equal grade; that said school was and is one of the accredited schools of learning in the city of Omaha.

6. That it is the intention and purpose of intervenor to have his children educated in the English language and also to have them acquire a working knowledge of the Polish language, so that they can receive information and be instructed in faith and morals in both the Polish language and the English language.

7. That it is impossible for the teachers in said school to give religious instruction properly to the children in the lower grades in the English language if said children are denied the right to receive a rudimentary education in Polish, and it is impossible for this intervenor and his wife to instruct his children properly in faith and morals and thereby discharge an obligation that is imposed upon them as a matter of conscience; that it is impossible for said children to communicate properly with their teachers and with their mother without using the Polish language.

8. Intervenor alleges that when he contributed to the expense of creating said school and when he contributes to the support and maintenance of the same, it was and is with the intention and understanding that the rudiments of the Polish language be taught
16 to his children in said school and that religious instruction be given to the children therein, who do not understand English, in the Polish language, until said children can acquire a sufficient working knowledge of the English language to understandingly take instruction in said language; that he has children attending said school below the eighth grade that do not have sufficient knowledge of the English language to intelligently receive instruction in the English language; that it is impossible to instruct said children without using the Polish language.

9. That the Act referred to in plaintiffs' petition deprives this intervenor of valuable property rights and of the right to contract; denies to him and others similarly situated the equal protection of the laws; deprives him of his liberty and property without due process of law; denies him the security of perfect religious toleration; molests him in his person on account of his mode of religious worship; molests him in his property rights on account of his mode of religious worship; that it is an unjust and unreasonable restraint upon the liberty of intervenor as a citizen and inhabitant of the State; that said Act operates to deprive this intervenor and others similarly situated of their liberty and property without due process of law and discriminates against one class of religious societies whose members are unable to worship God by the use of the English language; that it operates to interfere with the conscience of intervenor and of his wife and children in respect to their religious instruction; that it operates to retard, hinder and discourage religious education and the dissemination of knowledge; that it is an unjust and unreasonable restraint upon the personal liberty of intervenor and all other persons similarly situated; that said Act contravenes the provisions of the Con-

stitution of the United States, the Enabling Act which admitted Nebraska into the Union, and the Constitution of the State of Nebraska.

Amendment "A."—And intervenor further alleges that
17 sections 1 and 2 of said act are unconstitutional, null and void for the further reason that the provisions thereof, nor any of them, are embraced or included in the title to said act.

10. That the defendant, Samuel R. McKelvie, is the duly elected and acting Gove-nor of the State of Nebraska, and the defendant Clarence A. Davis is the duly elected and acting Attorney General of the State of Nebraska; that said defendants have indicated that they intend to proceed under and by virtue of their respective offices to enforce the provisions of the law referred to in plaintiffs' petition by causing the County Attorney of Douglas County, Nebraska, to arrest and prosecute the teachers, officials and agents of all schools permitting instruction to be given or which give instruction in any language other than the English language; that, because of this threat and intention on the part of the aforesaid officials, the children of this intervenor have not been permitted to receive instruction in Polish in said school and have been deprived of the right to receive proper instruction in a private school created and maintained in part by this intervenor; that because of the threat and intention of the aforesaid officials the children of this intervenor have not received instruction in said Polish language and that by reason of said threat the teachers and others in charge of said school have ceased to instruct the children of this intervenor in said Polish language, and have thereby prevented and still prevent the children of this intervenor and the children in said school from receiving religious instruction until they can speak and understand the English language, thereby greatly impairing the usefulness and prestige of said school and depreciating the property value thereof, and have, in a substantial way, deprived, and, unless restrain- and enjoined, will continue to deprive this intervenor of his personal rights as a citizen and of his property, without due process of law, to the great and irreparable injury of this intervenor and others similarly situated, for
18 which the law affords no adequate remedy.

Wherefore, Intervenor prays for a temporary order enjoining and restrai-ng the defendants, Samuel R. McKelvie, Governor of Nebraska, Clarence A. Davis, Attorney General of Nebraska, their deputies, subordinates and assistants, and the County Attorney of Douglas County, Nebraska, and all others acting under them respectively, and their successors in office, from enforcing or threatening to enforce the provisions of Sections 2, 3, 4 and 5 of said Act, and that, upon the final hearing herein, it be adjudged and determined that Sections 2, 3, 4, and 5 of said Act be unconstitutional, null and void, as being in violation of the provisions of the constitution of the State of Nebraska, the Enabling Act of the State of Nebraska, and of the Constitution of the United States, and for such other and further relief as may be just and equitable.

ARTHUR F. MULLEN,
Attorney for John Siedlik, Intervenor,

STATE OF NEBRASKA,
Douglas County, ss:

John Siedlik, being first duly sworn, says that he is the intervenor in the above case; that he has heard read the petition in intervention and knows its contents; and that the facts stated therein are true as he believes.

JAN SIEDLIK.

Subscribed and sworn to before me this 10 day of June, 1921.
[SEAL.] EDWIN C. BOEHLER,
Notary Public.

(Endorsed:) Filed June 16, 1921. Ethel Gossard, Clerk.

19 And on the same day, to-wit: On June 23rd, 1921, a demurrer was filed in said cause in the words and figures following, to-wit:

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, and Other States and Diederick Siefken, Plaintiffs,

vs.

SAMUEL R. MCKELVIE, CLARENCE R. DAVIS and OTTO F. WALTER, and Their Deputies, Subordinates, and Assistants, Defendants.

Demurrer.

The above named defendant, Otto F. Walter, County Attorney of Platte County, Nebraska, appearing herein pro se demurs to the petition in the above entitled action on the ground that the petition does not state facts sufficient to constitute a cause of action, in that it is an attempt to interfere by injunction with the administration of the criminal laws of the State of Nebraska, and in that plaintiffs have an adequate remedy at law for the protection of the rights as set forth in the petition.

Dated June 22, 1921.

OTTO F. WALTER,
County Attorney of Platte County.

(Endorsed:) Filed June 23, 1921. Ethel Gossard, Clerk.

And afterwards, to-wit: On July 21, 1921, a Court Order was entered in said cause in the words and figures following, to-wit:

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES and Diedrick Siefken, Plaintiffs,

vs.

SAMUEL R. MCKELVIE, CLARENCE R. DAVIS and OTTO F. WALTER, and Their Deputies, Subordinates, and Assistants, Defendants.

The application of the American Legion to appear as
20 Amicus Curiæ in the above entitled action coming on to be heard, is hereby granted.

The special appearance of defendants, Samuel R. McKelvie and Clarence A. Davis, is overruled, and the motion of the aforementioned defendants, to set aside service of process, is denied.

The motion of defendant, Otto F. Walter to set aside the temporary injunction order, is denied.

The demurrer of defendant, Walter, is overruled, and defendants granted fifteen days in which to answer.

To all of which, defendants except.

Dated, July 21, 1921.

FREDERICK W. BUTTON,
Judge of the District Court.

21 And afterwards, to-wit: On July 26th, 1921, an Answer was filed in said cause in the words and figures following, to-wit:

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES and Diederick Siefken, Plaintiffs,

vs.

SAMUEL R. MCKELVIE, CLARENCE R. DAVIS, and OTTO F. WALTER and Their Deputies, Subordinates, and Assistants, Defendants.

Answer.

Defendants Samuel R. McKelvie, Clarence A. Davis, sued herein as Clarence R. Davis, and Otto F. Walter, appearing herein by their attorney, Clarence A. Davis, Attorney General of Nebraska, answering the petition of plaintiffs herein:

I.

Deny each and every allegation contained in the paragraph of the petition numbered I, except that defendants admit the due incorporation and existance of a religious corporation under the name of "Nebraska District of German Evangelical Lutheran Synod of Missouri, Ohio and other states."

II.

Deny the allegations contained in paragraph of the petition numbered II that the course of study in secular branches in schools maintained by the plaintiff is identical with and in all respects equal to that of the public schools of Nebraska.

III.

Deny each and every allegation in the paragraph of the petition numbered V.

IV.

Deny each and every allegation in the paragraph of the petition numbered VIII.

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V.

Deny each and every allegation contained in the paragraph of the petition numbered IX.

VI.

Deny the allegations in the paragraph of the petition numbered X, that the enforcement of the statute quoted in paragraph VII of the petition would greatly impair the usefulness and prestige of schools maintained by plaintiff and the value of its property and diminishing plaintiff's income therefrom, and in a material and substantial way deprive the plaintiff and its teachers, pastors, officers and parishioners of their liberty and property without due process of law, to the irreparable injury of the plaintiff and its parishioners, and deny the allegation in said paragraph that the law affords them no adequate remedy.

And for a separate defense allege:

VII.

That a considerable portion of the population of the state is either foreign born or of foreign parentage with a natural tendency towards foreign ideals and ideals of government and with a natural hesitancy to adopt and assimilate American customs, ideas, methods and form of government.

VIII.

That the continued success of the republican system of givernment adopted by the United States of America, since its inception, is dependent upon a uniformly enlightened American citizenship in full sympathy with the ideals of this nation.

IX.

That for sometime there has been an effort to foster and maintain foreign customs, languages and ideals in some communities and localities in this state, and to check the growing Americanization of such communities and to render said communities immune
23 from all influences except those presented by leaders employing a foreign tongue; that the method commonly used has been to preserve the use of foreign languages in such communities that said communities might remain subject to the sole influence of foreign newspapers and foreign leaders, and those employing a foreign tongue; that the method of permanently establishing languages in such communities has been to educate the children of said communities in a foreign language before the child was thoroughly grounded in English; that this insidious foreign propaganda has been extensively carried on under the guise of both education and religion and by the foreign press.

X.

That to remedy the foregoing situation, which threatens the safety, peace, good order, well being and social welfare of the state and threatens to assume the proportion of a social menance, to limit the fields available for foreign propaganda, to insure the percolation of the fundamental principles of Americanization into said communities, the 1921 Legislature of Nebraska, keeping within the limits of the Constitution of Nebraska and of the United States, and in the exercise of police power of the state enacted Senate File 160 in the form as set out in the paragraph of the petition numbered VII.

Wherefore, defendants demand judgment dismissing the petition herein with costs, vacating the restraining order, previously granted, and for such other and further relief as may be desirable in the premises.

CLARENCE A. DAVIS,
Attorney General of Nebraska, Attorney for Defendants Samuel R. McKelvie, Clarence A. Davis, and Otto F. Walter.

24 STATE OF NEBRASKA,
Lancaster County, ss:

Clarence A. Davis being first duly sworn deposes and says that he is one of the defendants in the above entitled action; that he has read the foregoing answer and believes the facts and allegations contained therein to be true.

CLARENCE A. DAVIS.

Subscribed and sworn to before me this 23rd day of July, 1921.
[SEAL.] FRIEDA C. BAYERLEIN,
Notary Public.

(Endorsed:) Filed July 26, 1921. Ethel Gossard, Clerk.

And on the same day, to-wit: On July 26th, 1921, Answer to Petition of Intervention was filed in said cause in the words and figures following, to-wit:

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES and DIEDRICK SIEFKEN, Plaintiffs,

vs.

SAMUEL R. MCKELVIE, CLARENCE R. DAVIS, and OTTO F. WALTER and Their Deputies, Subordinates, and Assistants, Defendants.

Answer to Petition of Intervention.

Defendants Samuel R. McKelvie, Clarence A. Davis, sued herein as Clarence R. Davis, and Otto F. Walter, appearing herein by their attorney, Clarence A. Davis, Attorney General of Nebraska, in answer to the petition of intervention of John Siedlik:

I.

Deny the allegations contained in the paragraph of the petition of intervention numbered VII.

II.

Deny the allegations contained in the paragraph of the petition of intervention numbered VIII, that it is impossible to instruct the children of the petitioner without using the Polish language.

III.

Deny each and every allegation contained in the paragraph of the petition of intervention numbered IX.

IV.

Deny the allegations contained in the paragraph of the petition of intervention numbered X that the children of the intervenor have been deprived of the right to receive proper instruction in a private school created and maintained in part by intervenor, and deny the allegation in said paragraph of petition of intervention numbered X that the usefulness and prestige of said school is impaired and property value thereof depreciated, and that defendants have in a substantial way and will continue to unless restrained and

enjoined deprive the intervenor of his personal rights as a citizen and of his property without due process of law to the great and irreparable injury of the intervenor, for which the law affords no adequate remedy.

Wherefore, defendants demand judgment, dismissing the petition of intervention of John Siedlik with costs against the petitioner, and for such other and further relief as may be proper in the premises.

CLARENCE A. DAVIS,
Attorney General of Nebraska, Attorney for Defendants Samuel R. McKelvie, Clarence A. Davis, and Otto F. Walter.

STATE OF NEBRASKA,
Lancaster County, ss:

Clarence A. Davis being first duly sworn deposes and says that he is one of the defendants in the above entitled action; that he has read the foregoing answer to the petition of intervention of John Siedlik, and believes the facts stated in said answer to be true.

CLARENCE A. DAVIS.

Subscribed in my presence and sworn to before me this 23rd day of July, 1921.

[SEAL.] FRIEDA C. BAYERLEIN,
Notary Public.

(Endorsed:) Filed July 26th, 1921. Ethel Gossard, Clerk.

26 And afterwards, to-wit: On September 1st, 1921, a Reply was filed in said cause in the words and figures following, to-wit:

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO AND OTHER STATES and Diederick Siefken, Plaintiffs,

vs.

SAMUEL R. MCKELVIE, CLARENCE R. DAVIS and OTTO F. WALTER, and Their Deputies, Subordinates, and Assistants, Defendants.

Reply.

Comes now the plaintiffs herein and for their reply to the answer filed herein by the defendants alleges and says:

1. Without controverting any of the admissions of the defendants contained in the said answer the defendants deny each and every allegation of new matter therein contained.

ALBERT & WAGNER,
A. F. MULLEN, &
SANDALL & WRAY,
Attys. for Plaintiffs.

STATE OF NEBRASKA,
Dodge County, ss:

C. E. Sandall, being first duly sworn deposes and says that he is one of the attorneys for plaintiffs' corporation in the above entitled cause, that he has read the foregoing reply, knows the contents thereof and that the allegations contained in said reply are true.

C. E. SANDALL.

Subscribed in my presence and sworn to before me this — day of September, 1921.

——— ———,
Clerk of the District Court of
Dodge County, Nebraska.

(Endorsed:) Filed Sept. 1, 1921. Frederick W. Button, Judge.

And afterwards, to-wit: On September 24th, 1921, a Decree was entered in said cause in the words and figures following, to-wit:

27 NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, etc., et al., Plaintiffs,

vs.

SAMUEL R. MCKELVIE et al., Defendants.

Decree.

September 24, 1921.

This cause having been heretofore submitted upon the pleadings and the evidence, and taken under advisement by the Court, and the Court being now fully advised in the premises, and upon a consideration of said pleadings and evidence, finds in favor of the plaintiffs and the intervener and against the defendants.

It is, therefore, considered by the Court, that the defendants, their subordinates, deputies and successors in office be, and they are hereby forever enjoined and restrained from interfering with the plaintiff corporation, or any person or corporation similarily situated, in the giving of religious instruction in churches, private parochial and denominational schools in any language their members, or the patrons of such schools, may request or require, or with them in the giving of sufficient instruction in any language in their churches and their said schools to enable their pastors and teachers to impart religious instruction efficiently in such language to their members and pupils, and from molesting, or in any manner interfering with, the pastors or teachers giving such instruction in any language whatsoever.

To all of which findings and judgment the plaintiffs, the intervener and the defendants severally except, and are allowed 40 days to prepare and serve bill of exceptions.

By the court, FREDERICK W. BUTTON,
Judge.

28 And on the same day, to wit, on the 22d day of October, 1921, there was filed in the office of the Clerk of said Supreme Court, a certain Bill of Exceptions in the words and figures following, to wit:

29 In the District Court of Dodge County, Nebraska, Thursday, September 1st, 1921.

Before Frederic W. Button, Judge.

NEBRASKA DISTRICT OF THE EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES, Plaintiff,

vs.

SAMUEL R. MCKELVIE, CLARENCE R. E. DAVIS, OTTO F. WALKER, and Their Deputies, Subordinates, and Assistants, Defendants.

Reporter's Transcript Record of Trial.

Albert & Wagner,
Sandal & Wray, and
Arthur F. Mullen,
Attorneys for Plaintiff.

Mason Wheeler,
Charles S. Reed,
Assistant Attys. Genl.,
Attorneys for Defendants.

E. P. McDermott, and
Guy C. Chambers,
Appearing Amicus Curiæ.

WM. E. BUTLER,
Reporter.

30 Received from the attorneys for the defendant a transcript of the reporter's record of trial in the above entitled case for the purpose of examination and amendment preparatory to having same made a bill of exceptions herein.

Dated this 7 day of Oct., 1921.

ALBERT & WAGNER,
Of Counsel for Plaintiffs.

——— ———,
Attorneys for Plaintiff.

We at this time return the above transcript to the attorneys for the defendant and propo-e amendments to same as follows:

No amendments—a couple of corrections have been noted—"Wray" striken out on page 20—"Reed" inserted—name of the witness "Kalamaja" corrected on page 52.

Dated this 10th day of October, 1921.

ALBERT & WAGNER,
SANDAL & WRAY,
ARTHUR F. MULLEN,
Attorneys for Plaintiff.

Amendments ordered made.
FREDERIC W. BUTTON,
Judge.

31 I, Frederic W. Button, the judge before whom this action was tried and determined, hereby certify that the within record contains all the evidence offered and given upon the trial of the case tains all the evidence offered and given upon the trial of the case here entitled by either party and all parties hereto, together with all objections, rulings of the court made and exceptions taken by the parties and, upon the application of the defendants, this record is made a Bill of Exceptions and the same is ordered to be made a part of the record herein.

Done this 13th day of Oct. 1921.

FREDERIC W. BUTTON,
Judge 6th Jud. Dist., Nebraska.

32 REPORTER'S TRANSCRIPT OF RECORD OF TRIAL.

Index.

33 Fremont, Dodge county, Nebraska.
September 1st, 1921—a. m.

This action having been transferred for trial, by agreement of the parties hereto, to Fremont, in the district court of Dodge county, being called for trial on the date aforesaid, the following proceedings were had and the following testimony was adduced, as follows, viz:—

Judge Albert: Plaintiff now asks leave to amend paragraph 9 of his Petition by inserting therein by interlineation after the last word thereof as it now stands the following:—

And the plaintiff further alleges that sections 1 and 2 of said act are unconstitutional and void for the further reason that the provisions thereof nor any of them are embraced or included in the title of said act.

Mr. Wheeler: That is an entirely novel proposition to us, but we are ready to meet it now, and within the judgment of the court it may be amended.

(Same amended.)

Mr. Mullen: Intervenor asks permission to amend section 9 of the Petition of intervention by adding this same amendment asked by the plaintiff.

Court: You may do so.

Judge Albert: Plaintiff also asks permission to file his Reply as a general denial. It has been dictated and will be filed.

(No objection. Same filed.)

Rev. HENRY ERCK, being called on part of plaintiff, sworn and examined, testified as follows, viz:—

34 Examined by Judge I. *N.* Albert:

1 Q. Where do you live?
Q. At Lea, Colfax County.
2 Q. How old are you?
A. Forty years old.
3 Q. What is your business or occupation?
A. I am a pastor, minister of the gospel.
4 Q. Of what denomination?
A. Nebraska District of the Evangelical Lutheran Synod of Missouri, Ohio and other statez.
5 Q. How long have you been engaged in the work of the ministry?
A. For eighteen years.
6 Q. Aside from the ordinary duties of a minister, have you any other duties, in connection with them?
A. None.
Court: With schools?

7 A. If you consider that something aside from the ministry, I might say yes.

8 Q. What I am getting at is this: I believe you, your church or congregation, maintain a parochial school, too, in your pastorate?

A. Yes.

9 Q. Have you any duties with reference to the school?

A. Yes. I am supposed to supervise that school.

10 Q. Do you hold any office in the Evangelical Lutheran Church aside from that of being one of the pastors?

A. Yes sir.

11 Q. What is that?

A. I am a member of the Advisory Board of the Nebraska district.

35 12 Q. How long have you held that office?

A. About three years, I think.

13 Q. You may state whether you are familiar with the general object of this Synod?

A. Yes.

14 Q. What is it?

A. To preach the gospel.

15 Q. And to preach the gospel, of course, strictly speaking, means I suppose, to spread the gospel?

A. Yes.

16 Q. Are you engaged to any extent in missionary work?

A. Yes sir.

17 Q. In this State?

A. Yes.

18 Q. Among what class of people?

A. Well, among Americans; among people of German descent and, also, Russian extraction, immigrants.

19 Q. Are you acquainted with the situation, where this missionary work is conducted, as to the ability of the people whom you are teaching to read and understand English in religious matters?

A. That is a difficult question.

20 Q. Are there a considerable number of them who are not sufficiently informed in English to understand religious teaching in that tongue?

A. Yes sir.

21 Q. There are Russians who have been brought in to work in the beet fields of the State, I think.

A. Yes.

— Q. They are recent immigrants to this country?

36 A. Yes, sir.

22 Q. Now going back to the schools of your church conducted in this State: Have you had an opportunity to observe and examine their courses of study, the curriculum?

A. Yes, sir.

23 Q. Have you ever had any opportunity or occasion to compare that course of study or curriculum with the course of study prescribed by law for the common schools?

A. Yes, sir.

24 Q. And to compare it with the course of study, curriculum, pursued in the public schools.

A. Yes sir.

25 Q. Are you able to form an opinion as to how your schools of your church will compare with the public schools as to the secular branches taught and as to the efficiency with which they are taught in your schools?

A. Yes.

26 Q. You may state what your observation and comparison has been along those lines?

A. I consider them fully equal to the public schools.

27 Q. Is the course of study the same.

A. Yes sir.

28 Q. And in efficiency, your judgment is they are equal to the public schools.

A. Yes, sir; not only in my judgment, but I can bring figures.

29 Q. You have been engaged in teaching yourself, I believe?

A. I have some.

30 Q. In your official character you have had opportunities, and it has been a part of your duty to observe these things?

37 A. Yes, sir.

31 Q. Among the branches in your own schools, generally speaking, in this state, you teach the German language, I think.

A. We have done that.

32 Q. That has been a part of your policy and plan?

A. Yes.

33 Q. Now state to the court what reason, if any, you have for including German in the course of study in your schools?

A. We do that in order to enable the children to worship with their parents at home and in the church.

34 Q. Why could they not engage in devotional exercises and worship with their parents, if they did not understand English? Why could they not do that in English, I mean.

Court: That is, if they did not understand German.

A. That would destroy congregational worship; also family worship.

35 Q. State to the court whether there are a large part of your parishioners, members of your church, who are rural people and who are unable to speak the English language accurately?

A. I might say that our schools are conducted by the church for the sole purpose of doing the work of the church. As I have said before, the purpose of our synod is the spreading of the gospel. We are to teach the gospel to both young and old, or, in the words of the Master, to all creeds. If you will look in on the congregation Sunday morning, you will find children in the church. These children are American children; they are able to use the English language; they speak English; they play in English. And when they grow up, they will do their business in English; they will make love in English, and raise their own children in English. If none

38 but the children were affected by this legislation, we would not have much practical reason to appear here as plaintiff.

But we say also this: That at the time when this present generation of children have reached the age of majority, so that they have obtained voices in the re-establishment of the church, there will be English in the church, and in the services also there will be the English language. If you will look in the church on Sunday morning, you will find their grandfathers and grandmothers, their fathers and mothers. All the grandfathers and grandmothers, we may truly say, or nearly all, have been immigrants to this country—to the greatest extent coming from Germany. They have been schooled in the German language. They have settled on farms here in the State of Nebraska; have established a German congregation, and have their services in the German language. For these people, it is practically impossible to follow and be properly edified by an English service. The present generation of fathers and mothers are such as who have been born in Europe in part, and to a large extent in Germany. They have received their schooling in secular matters here in the English language; as far as business is concerned, they are pretty well versed in English. But for the reason that they have received their early religious education at the knees of their mothers and women in the German language, and also from their pastors at that time, in the German language, in matters of religion the language of their hearts is the German language, they are at the present time not able to receive proper edification exclusively in the English language. If this law is enforced, it will have this effect: that in religious matters the children will be alienated from their parents and grandparents. In religious matters, the family and the church will be divided. If the present generation of children is not—have some religious knowledge in the German language, in addition to religious knowledge in the English language, each congregation will consist of two congregations—a German section and an English section. Henceforth, the children, the parents and grandparents will not be able to worship in one service. Nor will the father and the pious mother be able to correct a wayward child if the child does not learn and understand the German language—the only language in which its parents can effectually admonish it. What the church needs now is, permission for parochial instruction in religious matters in German. Her children are English, and, as soon as they obtain a voice in the re-establishment of the church, the services will be conducted in English. Love for our children, and concern for their good and welfare, prompts us to instruct them in religious matters; and but few of the present sisters in the congregation feel that the children do not need also some instruction in the German language, or the foreign language of their parents, in religious matters, in order to keep up the natural bonds that exist between children and parents and grandparents and not have them severed.

39

36 Q. I believe it is one of the practices of your church, and one of the duties enjoined on your children, to conduct devotions in the home?

A. Yes, sir.

37 Q. In which all participate?
A. Yes.
38 Q. I believe they are conducted evenings and mornings?
A. Yes.
39 Q. And those devotions are generally conducted by the father of the house, or by the mother, if he is absent; and all join
40 and participate in the family worship.
A. Yes sir.
40 Q. Where the parents do not understand the English language sufficiently well to talk intelligently on religious matters, then the effect of this family devotion, these devotional exercises in the family, will be lost either on the parents or children, if the children do not understand the German language, or the language of their parents?
Ans. Yes, sir.

Mr. Wheeler: That is objected to as leading and suggestive.
Court: Objection overruled. It has been answered.
Mr. Wheeler: I move that the answer be stricken out so that I can make the objection.

(Stricken out.)

Mr. Wheeler: I renew the objection.

(Objection overruled. Defendants except.)

41 Q. Is the practice of family worship quite universal among your members?
A. Yes, sir; it is.
42 Q. You may state whether or not the prestige and standing of your schools would in your opinion be to any extent affected injuriously by the enforcement of this law?

Mr. Wheeler: Objected to as incompetent, immaterial and irrelevant.

(Objection sustained. Plaintiffs excepts.)

43 Q. You may state whether or not in your opinion, and from your knowledge of the affairs of your church and the schools, the elimination of the German language from the curriculum of your schools would affect the prestige or standing of your schools?

Same objection. Overruled. Defendant- excepts.

A. It may to some extent.
41 44 Q. In your judgment, would it affect the attendance, the enrollment, of your schools? to any extent?
A. It might.
45 Q. All other things being equal, would it not affect the attendance?

Defendants objects as leading and suggestive.

46 Q. All other things remaining the same, would it not affect the attendance?

A. I think it would.

47 Q. You may state whether or not there are any pupils attending your schools who are not members of your church?

A. There are in certain localities.

48 Q. State if you know why they attend your schools?

A. Some have come for the very purpose of learning another language.

49 Q. In your experience as a teacher, whem is the age, the apt age, the best age, to teach a child language? In early life or later?

A. In early life, of course.

50 Q. Speak by grades. Would you say it would be during their school study in the grades below the 9th, or after that.

A. In the grades below the 9th.

51 Q. You may state whether or not, in your judgment, the study of a foreign language injuriously affects the study of the English language by the same child.

A. I cannot see why it should.

52 Q. But if you eliminated, or your church eliminated the study of the German language from your schools by children below the 9th grade, and the study of all secular branches in any language other than English in your schools, would that have any effect on your missionary work?

42 A. I think it would indeed.

53 Q. Explain to the court how it would affect the missionary work in your church?

A. Our missionaries do work in more languages than one. In order to do that, they must be able to use different languages. In order to use different languages, they must learn them. As we have heard, the best time to learn them is during the school age. Our candidates for the ministry are, to the greatest extent, drawn from parochial schools, church schools, where we have been enabled to speak and use more than one language. So in case we send a missionary to Brazil to work among those who have emigrated there and who use the German language, they are able to carry on their work successfully. The same is true of Argentina.

54 *A*. You send some missionaries to Germany?

A. Yes, lower Alsace and Loraine. (Lorraine)

55 Q. In Prussia, there is a Lutheran Church supported by the State, or is there not.

A. That is not the Lutheran Evangelical Church. It is a combination of the Lutheran and the reformed church. That is not our church.

56 Q. Has your church ever been the established church of Germany?

A. No sir.

57 Q. Have your missionaries in the past been welcome in Germany by the government.

A. I don't think so.

58 Q. In other words, there is not the most friendly feeling in or between your church, and the established church of Germany?
A. Absolutely not.

Judge Albert: Now I think Mr. Sandal or Mr. Mullen would like to ask some questions.

43 Questions by Mr. Mullen:

59 Q. Now in regard to this matter of giving religious instruction and training in the Lutheran Church; what in a general way are the duties of a parent with reference to his obligation to give this instruction?
Q. It is the duty of a parent, as far as the home is concerned, to follow the injunction of St. Paul to the Ephesians to bring up children in the culture and admonition of the Lord. From that springs the establishment of the church school.
60 Q. The prime purpose, as I understand it in conducting these schools, is to use them as a basis to support and help the parent give religious instruction to children?
A. Yes.
61 Q. That is the basic purpose of the parochial school to help the mothers and fathers and grand parents that speak the German language teach religion and morals. Could these parents correctly engage to do this without the use of the German language.

Defendants object as leading and suggestive and immaterial.
Objection overruled. Defendants except.

A. No sir.
62 Q. Now you have certain sacraments that must be administered at different stages of a child's growth?
A. Yes.
63 Q. First communion and confirmation?
A. Yes.
64 Q. Are there some educational requirements in matters of religion before the child can take first communion?
A. Yes sir.
65 Q. Does that apply to confirmation?
A. Yes.
66 Q. Whose duty is it to know whether the child is
44 qualified to be confirmed.
Q. It is the duty of the pastor and the parent.
67 Q. Is it necessary for the parent to know that fact?
A. The parent ought to know that.
68 Q. A German mother, could she understand whether the child was qualified or not without she had a German education.
A. No, sir.
69 Q. Or the father, either one.
A. No, sir.

Court: Do you contend, Mr. Mullen, that section 4 of this act precludes preaching in a foreign language, or the later act.

Court: Yes, if you apply it in its broad application, In its broad application, it probably prevents the use of German in the school.

Questions by Judge Albert:

70 Q. At what age are children usually confirmed in your church?
A. About 15, 14, some 15.
71 Q. Speaking of grade schools, about what grade?
A. 7th and 8th on an average.
72 Q. Generally speaking, assuming they have attended grade schools and received proper instruction, they would be confirmed before they had entered the 9th grade—generally speaking.
A. Yes, sir.

Questions by Mr. Mullen:

73 Q. The first communion when does that take place?
A. At the time of the confirmation.
74 Q. On the confirmation day?
A. Yes, sir.

45 Cross-examination.

By Mr. Wheeler:

75 Q. You are an officer of the plaintiff's Synod?
A. An officer of the Nebraska District of the Evangelical Lutheran Synod of Missouri, Ohio and other States.
76 Q. Isn't the name the Nebraska District of the German Lutheran Evangelical Synod?
A. No, sir.
77 Q. You testified I believe, if I have you correctly, that the best age to teach children languages is when that child is underneath the 9th Grade.
A. Yes, sir.
78 Q. And the reason for that is that the child retains the impression of the first language it learns?
A. I am not prepared to say yes or no to that.
79 Q. Did you ever know of a man who learned a foreign language after he passed the 9th grade that did not speak it with an accent.
A. I don't see why a person could not do that.
80 Q. Did you ever know of such a person in your experience as a language teacher.
A. I am not able to point to a specific instance just now.
81 Q. Were you born in this country?
A. Yes, sir. So were my parents.
82 Q. You speak German?
A. Yes.
83 Q. When did you acquire your knowledge of German?
A. As a child.
84 Q. At what age, sir?

A. I acquired it in the home and in the school.

46 85 Q. At what age did you acquire it in school?

Q. I went to school ever since I have remembrance; say six or seven years old.

86 Q. At what age did you commence the study of German in school?

A. I suppose at the same time.

87 Q. What time was that?

A. About six or seven years old.

88 Q. You have testified I believe that the parochial schools maintained by your Synod are the equal of the public schools?

A. Yes, sir.

89 Q. Would you say that of your school at Scotts Bluff, Minatare?

A. I consider the conditions under which the people live there who send their children to these schools is such that it is very difficult to class that school with the average school.

90 Q. How about Bayard?

A. I cannot say about that. That is Russian, I think, and the same condition applies there as at Scotts Bluff.

91 Q. You did not take the western schools into consideration when you replied that the parochial schools were the equal of the public schools?

A. I would like to give you some statistics in answering that question on the state of our schools in the State, if you will allow me.

92 Q. I would rather you would not volunteer them right now.

A. I don't know how to answer your question, because of the peculiar conditions I said I could not class them as a real school.

93 Q. From your experience, can you give the percentage of the number of your parishioners or communicants who are unable to understand English? Can you give a rough estimate?

A. A rough estimate of the number of communicants un-

47 able to understand English at all?

Court: In Minatare.

A. It is a difficult matter to figure it in numbers.

94 Q. Can you give any rough estimate.

A. Why, to be conservative, I would say 10%.

95 Q. In rough numbers then, 10% of the parishioners of the Evangelical Lutheran Synod do not have sufficient knowledge of the English language to comprehend religious exercises? Is that a fair estimate.

A. Yes, sir.

96 Q. Now is this 10% composed of young men *of* old men?

A. Old men and old women.

97 Q. They are not the recent arrivals then?

A. No sir.

98 Q. They are the older people?

A. Yes, sir.

99 Q. Has your organization ever made any attempt to teach the older people English?

A. No, sir.

100 Q. You have confined your efforts to teaching the young people German rather than the older people English? Is that correct.

A. Yes.

101 Q. I suppose it is easier and simpler to teach German to the young than to teach the older people English.

A. Indeed it is.

102 Q. That is why you have adopted that policy.

A. Yes.

103 Q. I believe you also stated that if this foreign language law was enforced, its effect would be to alienate the children from the parents in religious matters.

A. Yes sir.

48 104 Q. In giving that answer, you assume that the foreign language prohibited religious services in German or any other language but English did you not?

A. No, I did not presume that.

Questions by Mr. Reed:

You stated that the general purpose of the parochial schools was to teach religion, did you not.

A. Yes sir.

105 Q. Is that a greater purpose than the purpose of giving an education to a child.

A. It is the purpoze of our schools to give the children a christian education; also their secular education from the christian standpoint.

106 Q. Then repeating the same question, can you say that the teaching of religion is the major purpose of the parochial school as compared with the purpoze of giving an education to the child to make a living?

A. I would not like to say that. I could qualify my answer by saying we arrange our schools to be a help to the public school in secular matters, and, in addition to this, we give them the necessary religious instruction.

107 Q. Do you give them that in the same length of time that the public schools give a purely secular education; do you people accomplish this in the same time?

A. Many of our schools put in more time than the public schools do.

108 Q. Are you familiar with the curriculum of the public schools?

A. To some extent.

109 Q. Upon what do you base your declaration that the parochial schools are equal to the public schools.

49 A. I have children of my own and in my parish who attend the church schools and from there go to the public school. Likewise, children who have attended the public school before they attended the church school. And I find that as to age the children are equal.

110 Q. You are what is known as an educator?

A. I am a minister of the gospel. I am no more doing practical teaching in the school.

111 Q. Then you would regard your opinion concerning the efficienty of the schools purely as your personal view and not your view as an educator?

A. No, sir. I have gathered statistics.

112 Q. Can you give me the required curriculum of the public schools?

A. I cannot at present do that.

Mr. Mullen: I don't think any of us can.

A. I don't think anybody can.

113 Q. Do your parochial schools maintain patriotic exercises?

A. Yes, sir.

114 Q. What sort of length of time is devoted each day to them, in rough numbers.

A. I cannot say. I cannot specify what time.

115 Q. Will you give me any of the patriotic exercises carried on by the most of the parochial schools.

A. Our children are taught U. S. History, and they are taught the national hymns.

116 Q. Anything in addition to that?

A. They undoubtedly receive some notification of the importance of Washington and Lincoln and their birthdays, and matters like that.

117 Q. You are certain they receive that information?

A. I am quite sure.

50 118 Q. Can you repeat the national Anthem?

A. I think I can.

119 Q. Do you think a majority of the graduates of the parocgial schools maintained by your Synod can repeat the national anthem?

A. Sure they can.

Court: Probably beat us in that. They can repeat it in two languages.

120 Q. You are familiar with the parochial schools of Scotts Bluff county, are you not?

A. I am not the man who handled that particular case. I would rather have somebody else testify in that case. I am familiar only in a general way, not in details.

121 Q. You stated in your direct examination that the peculiarities of the schools of Minatare and Scotts Bluff were due to the peculiar parentage of the children who attended those parochial schools did you not.

A. Yes, sir.

122 Q. Don't a great many of the children of similar parents attend the public schools of Scotts Bluff county?

A. I suppose they do.

Questions by Mr. Wheeler:

123 Q. The 10% of your parishioners who are unable to speak English are the older people?

A. Yes.

124 Q. Parents or grand parents?

A. Mostly the grand parents, some parents.

125 Q. There is nothing to prevent the parents instructing the grand parents in the English Language?

A. The parents are not sufficiently able to use the English language to furnish that instruction.

51 126 Q. Then you didn't say 10% who were unable to understand English were grand parents?

A. I did not confine it to the grand parents.

127 Q. I believe you said German was the language of the heart of your parishioners? Did I understand you correctly?

A. Not with all.

128 Q. With many of them?

A. It is to a large extent with those who received their tra-ning in that language.

129 Q. Have you any doctrine in your Synod that cannot be expressed in English?

A. No, sir.

130 Q. If you continue to teach children German in order that they man communicate with their German parents, you will have a perpetual system of engrafting German on all of your parishioners, will you not?

A. I don't think it will work out that way as I have testified before the language of the children is English. All their secular instruction is given in English, and to a large extent religious instruction is given in Englıgh, and you will find when they reach majority they will desire and want the services in the church to be conducted in English. I maintain for the present time, in order to keep the children from being severed from their parents, in religious matters, they ought to have the rudiments of German taught for the purpose of receiving some religious instruction.

131 Q. Are your schools actually teaching German to children under the 9th Grade now at the present time.

A. I could not point out one that has taught it since this last law was enacted.

132 Q. That is, I mean actually teaching it at the time the Simon's law was in effect.

52 A. After the opinion of the State Supreme Court, which permitted the use of another language outside of school hours, that was done.

133 Q. Only outside of *sh*cool house, I suppose.

A. Yes, sir.

134 Q. Are your parochial schools progressive? Is the attendance increasing? Are they a successful institution at the present time?

A. Yes sir.

135 Q. And you have more students this year than last year.

A. I am not able to say off hand. I will have to compare the statistics.

136 Q. Has there been any decrease in attendance.

A. If there has, it has not been great, such as to draw particular attention.

137 Q. How about the year before.

A. I am not able to answer correctly.

138 Q. You cannot say that the attendance of the schools has been diminished because they complied with the foreign language law, can you?

A. I think I can.

139 Q. You have not as many pupils in attendance you think? You have had as large attendance as you had before the foreign language law went into effect.

A. I am not able to give statistics in that respect. But I consider the word "prestige" in somewhat a different light. Perhaps, looking at it only from numbers.

Redirect examination.

By Judge Albert:

140 Q. What are the peculiar conditions you refer to in Scotts Bluff and Minatare.

53 A. Our work at Scotts Bluff and Minatare is mostly missionary work among recent immigrants from Russia. These people work in the beet fields from Spring until late in the fall. I understand they do not get back in the city until approximately the 1st of November, and then leave the city to get out there to their work about in April. So the children flock in there about the 1st of November in large numbers, and leave in equally large numbers in April. So a school conducted under such conditions has not a fair chance to work upon the children.

141 Q. Can those children, as a rule, speak English and their parents?

A. Their parents? Hardly; at least very little.

142 Q. You do not maintain any schools for grown-up people, as a rule?

A. We have the church and a normal and a seminary. We have schools in which our religious workers are trained.

143 Q. You do not open the schools for your parishioners generally past the age of twenty-one?

A. No. We do not consider that church work.

144 Q. Speaking about your exercises. Do you have patriotic exercises in your schools?

A. Yes, sir.

145 Q. Athletic exercises, etc.

A. Yes.

146 Q. Have your schools opened with prayers in the morning?

A. Yes sir.

147 Q. I suppose like most churches you ask God to protect certain dignitaries of the country—the president?

A. We are taught to pray for the government, and teach the children to pray for the government.

148 Q. Do you sing the national airs of any other country in your schools?

A. No, sir.

54 149 Q. Speaking about the work of education old people in the language. Generally speaking, they don't have time to take the time to take lessons in English or any other language, do they?

A. No, sir.

150 Court: You spoke of having U. S. history. Do you have civil government?

A. Yes, sir.

Questions by Mr. Mullen:

151 Q. You spoke of some statistics you have. Have you those here available, so you can give them in evidence?

A. Yes.

152 Q. What do they consist of ordinarily?

A. It is in regard to the qualifications of the teachers and the efficiency of the schools.

153 Q. Produce those, please.

A. (Same produced to counsel.) I have been asked to gather up statistics in these matters recently. I can offer some in the following numbers: We have 109 schools in the State. The reports I have come from 90.

154 Q. From ninety of those schools.

A. Yes, sir.

Professional life	67
1st Grade State Certificate	15
2nd Grade " "	1
1st Grade County "	3
County Permit held up	1
High School experience	1
High School, city and State	2

8th grade examination in the past two years shows following results:

Year ago 159 children took examination. 127 passed, Average 79 percent plus. Last spring 223 took examination, that is, the children, and 188 passed. Average 84 percent plus.

55 155 Q. These are certificates referred to in the State?

A. Yes.

156 Q. The same as used in the public schools?

A. Yes.

157 Q. Do your teache-s have certificates?

A. Yes; they must have.

158 Q. Are your schools as a rule substantially equivalent to the public schools in the same vicinity?

A. Yes, sir.

Redirect examination.

By Judge Albert:

159 Q. As a man who has been acquainted with educational work, and experienced along educational lines, on the percentage you have given of those who have passed examinations and those who have not, would you say that was a high, low or an average?
A. I think it is a very good average.

By Mr Mullen:

160 Q. Does it average with the public schools in the same vicinity, as far as you know?
A. I cannot state definitely; but, as a matter of hearsay, I believe the report of 50 of the public school children passing the 8th Grade examination is a good average.

By Judge Albert:

161 Q. Taking your experience and knowledge in your line of all institutions, you say that is a good average.
A. Yes, sir.

Witness excused.

C. F. BROMMER, being called by the plaintiff, sworn and examined, testified as follows, viz:

Examined by Judge Albert:

162 Q. How old are you?
56 A. Fifty-one years old.
163 Q. Where do you reside?
A. Hampton, Nebraska, near Hampton, Nebraska.
164 Q. In what business or occupation are you engaged?
A. Minister of the Gospel.
165 Q. In what denomination?
A. In the Evangelical Lutheran Church of Missouri, Ohio and other states; Nebraska District.
166 Q. That is the plaintiff in this action?
A. Yes, sir.
167 Q. Does your church maintain a school at Hampton, or near there?
A. Yes sir.
168 Q. Do your duties as a pastor relate somewhat, to some extent at least, to that school?
A. Yes, sir.
169 Q. In what way?
Q. Well, the pastor is the pastor of all the people, of all the souls entrusted to him, and the children also. He is to supervise the schools.

170 Q. What is the general purpose of maintaining those schools, your school and other schools of like character?

A. It is the purpose to give the children religious instruction.

171 Q. That is the primary purpose?

A. The only purpose, you might say.

172 Q. But in connection with that, you also give them religious instruction.

A. Yes, sir.

173 Q. And that secular instruction is in the branches required by law to be taught in the public schools of the State.

57 A. Yes, sir.

174 Q. The same course of study?

A. The same course of study.

175 Q. In addition to teaching the secular branches required by law and giving religious instruction, it has been the custom of your school to teach and use the German language in regard to all those things, including those below the 9th Grade.

A. Yes, sir.

176 Q. Aside from the culture or educational value of teach- the German language, what was the purpose of the churchm, if any for having the German language a part of the curriculum of these schools?

Mr. Wheeler: That is objected to as immaterial.

Objection overruled. Defendants except.

A. To enable the children to partake in devotional exercises at home of the parents and attend services understandingly with their parents who are not able to attend with the greatest benefit English services.

177 Q. May I ask why it was not possible for them to participate in these exercises in the English language.

A. We have quite a number of children in our congregations we may say in the country. We have mostly a rural congregation who do know enough English for every day uses, you may call it, but who could not follow an English sermon understandingly; and to enable the children to attend our services with their parents we thought they shou-d know enough or so much of German as to know themselves and understand and give themselves to God.

178 Q. In your schools I suppose you teach the catechism?

A. Yes.

179 Q. And that is made a part of the preparatory educa-
58 tion of the children for confirmation in your church, is it not?

A. Yes.

180 Q. Jnowledge of that?

A. Yes, sir.

181 Q. Your church I suppose, as all christian organizations do, enjoin upon the children, or upon the parents, certain duties with respect to their children?

A. Yes, sir.

182 Q. And among them is the duty to instruct and admonish children *im* in matters of faith and religion, is it not.

A. Yes, and teach them the word of God.

183 Q. Then I would judge from your testimony that it is a part of the duty of the parents of children in your church to co-operate with the pastor and the school in the preparation of children for their entrance into the church.

A. Yes, sir.

184 Q. As a pastor, I would ask you whether a parent who has received his religious training in the German tongue—speaking generally—the ability, would he be able to impart intel-igently the religious instruction necessary to co-operate with the school and the pastor in the preparation of children to join the church.

Mr. Wheeler: The defendants object to that as incompetent, immaterial, irrelevant, calling for the conclusion of the witness.

Objection sustained. Plaintiff excepts.

185 Q. I understood you to say that a large percentage, or quite a percentage of the membership of your church in the State of Nebraska, while they would have a knowledge of the English language sufficient for every day purposes, do not have any of it in respect to religious matters, or sufficient knowledge of it in order
59 to impart religious instruction in that tongue?

A. No. May I explain it?

186 Q. Yes. As I understand your purpose in teaching the children the German language is, in order that the children of such parents may receive instruction in the catechism and their training in the church in the language which both understand.

A. Yes, zir.

187 Q. Have you had any experience in undertaking to impart or converse with members of your church who had been educated in religion in the German language; have you ever undertaken to talk with them about religious matters in the English tongue?

A. Yes, sir.

188 Q. Is it easy? State whether or not you find any difficulty in having your minds meet in that language?

A. How do you mean it? Do you mean if I could make them understand a biblical truth in English as well as in German?

189 Q. Yes.

A. Some of them I could not.

190 Q. Your local congregations are governed by a local board, I believe.

A. They are self-governing.

191 Q. And have to act through a board of trustees?

A. Yes.

192 Q. And the pastor is ex officio chairman of the board is he not.

A. Yes.

193 Q. Now in your church in this State, the support of your schools comes in the way of voluntary contributons from your membership?

A. Yes.

194 Q. You may state from what class of people the principal part of these contributions come? The older men, heads of family or the young people?

A. Well, from the heads of family.

195 Q. Who occupy the official positions in these local boards?

A. Usually the elderly men who have families.

196 Q. State whether or not there is quite a percentage of the membership of these local boards who have received their church education in the German language.

A. I think they are about the average of the congregation, that all the congregation has.

197 Q. You may state whether or not those men would be able to participate intelligently in the conduct of the business affairs of the congregation in the English language?

A. I do as a rule. As a rule, I think they could all participate in the business transactions in the English language.

198 Q. But in the use of ec-lesiastical terms, theological terms, would they be able to do that.

A. Many of them would not.

199 Q. Would they be able to read a record of the preceding meeting in the English language.

A. Is it of the congregation?

200 Q. I mean the business of the congregation?

A. Oh, yes, sir.

201 Q. Most of them would be able to do that?

A. Yes.

202 Q. Some would not be able to read it in English?

A. Yes, there would be some who could not.

203 Q. They wou-d not as readily grasp the record of a proceeding in English in many cases as they would in German?

A. Some would not.

61 204 Q. Your children are prepared for the first communion along sometime before they would enter the 9th Grade.

A. As a rule.

205 Q. And they undergo a course of preparation for that event in their religious lives.

A. Yes, sir.

206 Q. Who prepares them for that ordinance?

A. The pastor.

207 Q. Who, if any one, is supposed to co-operate with him?

A. The congregation by prayer and the parents by practical instruction.

208 Q. It is the duty, one of the duties of the parents, to help, assist, explain and admonish?

A. Yes; help along.

209 Q. Do the parents as a rule take any interest in that event.

A. Yes, sir; they surely do.

210 Q. It is quite a day is it not in the church when a class takes its first communion.

A. Yes, sir.

211 Q. Now, then, you have special services on that occasion? It is a special occasion?

A. Yes.

212 Q. Could all the members, all the parents and members, and the children, participate intelligently in that service if it were conducted in the English tongue exclusively?

A. No, sir.

213 Q. Would there be a considerable percentage of them who could not?

A. Well, it is different. There are some congregations in the cities where it would not make any difference hardly, but some; in the country, there would be a large percentage of them who could not with benefit follow the discourse.

62 214 Q. That would be true especially with the mothers?

A. Yes; more so than with the fathers.

215 Q. You may state whether or not you have knowledge of the policy of your church in the State of Nebraska in respect to the use of the English language in the present and future?

A. As we look at it, the church -as no business at all to teach any language. The business of the church is to preach the gospel as Christ commissioned the church, as nearly as we can, without English. The church must employ a language, and the decision rests with the church what language to employ in order to attain its ends.

216 Q. There is a gradual growth, is there not, in the use of the English language in your church?

A. Indeed there is.

217 Q. It is a part of the policy of the church to encourage the members to eliminate, as rapidly as possible, all other languagez.

218 Q. We do not retard it or push it. We let it take its natural process as far as we can. It is painful work for pastor and congregation to use both languages. We let the language question take its natural process. In course of time we will. But we have not arrived at such a situation that we could only use one language.

219 Q. I mean is there any policy in your church to exalt the German language above the English?

A. No.

220 Q. Is it not the policy of the church to encourage the use of the English language and make it eventually the language of the church?

A. That is what we are working upon.

221 Q. You may state to the court the general programme of your parochial schools, beginning with the opening of school, etc?

A. We open school with the beginning of a hymn and a

63 prayer in which all children participate. Then we have from forty five to fifty minutes, maybe half an hour, of religious instruction, including the recitation of bible passages which the children have learned. Then we have a stated course of study in our schools and to my knowledge have the same studies as the public schools have.

222 Q. You say singing of a hymn and a prayer at the opening?
A. Yes.
223 Q. Who are the objects of your petitions when you open your school with prayer.
224 Q. We thank God that he has mercifully protected us the night before and ask Him to Keep us from doing wrong, giving us power to do His will, and then the Lord's prayer which concludes our prayer.
225 Q. I mean in your devotions is there the element of patriotism and love of country?
A. Certainly.
226 Q. You have flag exercises?
A. Yes, sir.
227 Q. They are a part of the programme of the school?
A. Yes, sir.
228 Q. You have heard some testimony here and discussion about the conditions prevalent at Scotts Bluff and Minatare, this State, in the parochial schools there, have you not?
A. Yes, sir.
229 Q. Are the Russians, who have been mentioned as beet-field workers there, permanently located, or are they a floating population?
A. It is mostly a floating population.
230 Q. And the children who attended school last year, if not this year, think you a large number will be away and a new set will be in your schools next year?
A. As a rule.
231 Q. Then your church does not have these children
64 from the time they are fit to go to school until they graduate, but generally have them about a year.
A. Of course we have some of them; but the majority of them we have not during all the school year.
232 Q. They are floating attendants?
A. Yes.
233 Q. The parents of those children are Russian immigrants?
A. Yes.
234 Q. And some of the children themselves have been born in Russia.
A. Yes; very many of them.
235 Q. And they do not speak the English language in their homes?
A. Not the parent. I have worked among them formerly, but not in the last ten years. At that time they very seldom spoke the English language. They were not able to. Emigration has stopped from Russia about twenty five years ago, and then the German-Russian set in. They have not been here since the other Germans. But, as far as I know, the language of the home, at least of these German-Russians living in the country, is German. With those in the city, some of them, it is English.
236 Q. Their devotions are in the German language.
A. Yes.

237 Q. And it is spoken in the churches?
A. Yes.
238 Q. The old folks could not understand religion preached to them in any other tongue.
A. No.
239 Q. Would it be possible for a missionary to work effectually among these people with the use of the English language exclusively?
A. Would it be possible to teach the children under the 9th Grade?
240 Q. Yes, with the use of the Englizh language perhaps effectually.
65 A. Well, you can teach children.
241 Q. I say could you make it a success? Would it be effectual?
A. In the course of time, but I think a good deal of time would be necessary.
242 Q. Yes. A man might die in time and he might need something else.
A. Not at the beginning.
243 Q. Would it be possible to conduct these schools from your standpoint and train them in matters of faith easily without the use of the German language.
A. No, sir. You could not well do it.
244 Q. Could you prepare children for their communion without the use of that language properly?
A. Not as they are.
245 Q. You would have no help or support effectually with the parents in preparing them for that without the use of the German language?
A. No, sir; they could not assist.
246 Q. Those schools have been more or less interfered with out there, their usefulness?
A. The only school we had trouble with, that has been closed down.
247 Q. That is the one at Scotts Bluff?
A. Yes.

(At this juncture court took a recess until 2 o'clock P. M., at which time court called and the direct examination of Rev. Brummer was proceeded with, as follows, viz:

248 Q. From your knowledge of the schools of your church in this State, are you able to say whether the elimination of the use and the teaching of German in your schools would effect the standing or prestige of the schools, the attendance of them?
A. I think it would the attendance in many cases.
249 Q. Are you able to say whether it would operate to keep away pupils who would otherwise attend the schools.
66 A. Well, I suppose it might a number of pupils who attend the school in order to learn the German language, and no

doubt they would not attend any more if they would be prohibited from learning German.

250 Q. Of these pupils, the attendance at present and prospective, a large number of those would want to attend your school in order to take up German before they passed into the 9th Grade?

A. Yes, sir.

Cross-examination.

By Mr. Wheeler:

251 Q. You have a separate congregation, a separate school which you have charge of, or is your work as general supervisory officer of the Synod?

A. Both.

252 Q. How many communicants do you have in your parish?

A. Members?

253 Q. Yes.

A. About three hundred.

254 Q. You know them all individually?

A. Yes, sir.

255 Q. What language do you preach in there?

A. In German and English.

256 Q. How much German and how much English; what part in German and what part in English?

A. We have had so far four months' German and one English, but certain conditions will not allow me and at present we have more English, but the time is taken up with other matters or work, and it is impossible to serve the congregation.

257 Q. Does the Synod attempt to regulate the language you use in religious exercises?

A. Not at all.

258 Q. That is left to you entirely?

A. It is left to each individual congregation.

259 Q. You are head of the parochial school also?

A. Supervisory officer.

260 Q. How many students do you have in your school, or did you have last year.

A. In ours, I think ninety or ninety two, might have a few less or more, say ninety. Two schools.

261 Q. How many did you have the previous year?

A. One hundred, but a number of them have been confirmed and there are not so many as will be soon.

262 Q. Are you making any improvements in your school, physical improvements?

A. In regard to equipment?

263 Q. A. Yes.

A. We try to keep them in first class order.

264 Q. You testified I believe that there were a number of your parishioners who know enough English to take part in business

transactions, but not enough to take part in religious transactions. Is that correct?

A. Yes, sir.

265 Q. Why? How do you account for that.

A. There are certain expressions used in a sermon, for instance, which we do not use in every day conversation. Take, for instance, sanctification, transfiguration, the Trinity, the atonement, perhaps, in the person of Christ. There are very many expressions used in a sermon which are not used in every day life conversation
68 which they would not understand.

266 Q. These men pick up English in business transactions?

A. Yes, sir.

267 Q. If there were more English used in the church, would they not pick up the English language just as they have picked up the English in business?

A. Well, they might.

268 Q. How many of your people in number 300 do not understand enough English to take part in English in the religious exercises?

A. I could not say.

269 Q. Approximately.

A. Well, I would say 10 to 20%.

270 Q. Are they the young or the old people?

A. The old people. We have two widows of civil war veterans who never in their lives have learned to understand an English serman.

271 Q. Have you any members of your congregation who do not understand enough German to take part in German religious exercises?

A. No, sir; not that I know of. The younger people learn to understand the English language, one language as well as the other—that is, the younger people.

272 Q. But every one of your parishioners understand German?

A. Yes.

273 Q. You stated I believe it was the policy of your church at some future time to discontinue the use of the German language.

Judge Albert: I object to that because it is something the witness did not say.

274 Q. What is the policy on the part of the church as to discontinuing the use of the German language.

A. As I said before, the church has not a commission to
69 teach any language. We do not teach any language as language. We have a commission from the Lord to teach the gospel, and we teach it as we find it among the people. In China, we use the Chinese; in Germany, the German language. Our Synod teaches in seven different languages in this country, and we preach to the people in the language in which we can lead them to the truth and to the Lord.

275 Q. You say the English language will eventually be the language of the church in America.

A. In course of time it undoubtedly will be. It is hard to tell when. You must let that matter have its natural course. The younger generation speak English and prefer English among themselves to any other language in conversation. When they grow up, they will prefer English in the church, too, undoubtedly.

276 Q. In what language do you conduct your songs and prayers in the schools?

A. In late years, the English language.

277 Q. Your testimony as to conditions in Scotts Bluff was derived from your personal knowledge acquired about ten years ago, was it not?

A. No, sir. I think you misunderstood my statement. I have worked among the German-Russians alone. I have not been pastor at Scotts Bluff. It is as a member of the board of missions that I know I have not been up there over the field in seven years and kept in touch with the conditions.

278 Q. You have not been up there since seven years ago.

A. No sir. I have just heard by report.

279 Q. Then your description of the situation at Scotts Bluff at the present time is derived from hearsay.

70 A. No, sir, not hearsay.

280 Q. What is it derived from?

A. Derived from missionaries who have been up there. They have to send in regular reports on the condition of the church and the school and the result of the work.

281 Q. Then it is derived from these reports and not from your knowledge?

A. It is not from I have been there, but from these written reports from out there.

282 Q. The only thing you know about the situations is derived from reports at the present time.

A. From the reports of the men out there only.

283 Q. Now does this floating population apply to the public schools as well as to the parochial schools generally?

A. Out there?

284 Q. Yes.

A. Yes, sir.

Redirect examination.

By Judge Albert:

285 Q. You say this is not so much from personal knowledge or observation of the conditions at Scotts Bluff, the western part of the State, as it is from the common history of the State that you know these conditions exist out there.

A. It certainly is.

286 Q. It is a part of the records of your church?

A. Yes, sir.

45

Questions by Mr. Mullen:

287 Q. This is what you have learned in the usual and ordinary course of carrying on the business of the church?
A. Yes. Our missionaries have to report regularly every three months on the condition of the congregations and the schools
71 and on the difficulties arising. If special difficuoties arise they come for advice to the members of the Board of Missions who hear them.
288 Q. Without your request?
A. Yes. They are under obligation to make reports to the church.
289 Q. Is that for the purpose of giving the Synod information regarding the condition?
A. Yes, sir.

Witness excused.

JOHN SIEDLIK, being produced, sworn and examined on the part of the plaintiff, testified as follows, viz:

Examined by Mr. Mullen:

290 Q. What is your name?
A. John Siedlick.
291 Q. Where do you live, Mr. Seidlik?
A. South Omaha, 29 A Street.
292 Q. Where were you born?
A. In Galicia.
293 Q. In Russian-Poland?
A. Poland, in German Poland.
294 Q. How old are you?
A. Thirty-eight.
295 Q. Are you a naturalized citizen of the United States?
A. Yes.
296 Q. Completed your citizenship?
A. Yes.
297 Q. How long have you lived in Douglas county?
A. Eighteen years.
298 Q. A voter and qualified elector of this State.
A. In this State.
299 Q. You vote at elections?
72 A. Yes.
300 Q. What parish do you belong to down there, what church?
A. Polish Church, St. Francis Parish.
301 Q. What religion is that?
A. Catholic.
302 Q. Roman Catholic, is it?
A. Yes.
303 Q. Are you a married man?
A. Yes.
304 Q. How many children have you?

A. Seven.
305 Q. Was your wife born in Poland?
A. Yes.
306 Q. Does she speak the English language?
A. No, sir.
307 Q. What business are you in at South Omaha?
A. I am at the Union Stock Yards. I take sheep in car, load cars.
308 Q. That is you are a yard man?
A. Yes.
309 Q. You speak some English, do you?
A. Not very much.
310 Q. Does your wife spezk any English at all?
A. No, sir.
311 Q. What language do you use in your home?
A. Polish.
312 Q. Do you talk to your children in that language?
A. Yes; talk to them Polish, and they talk some English.
313 Q. Can your wife talk to them in the English language with reference to religion?
73 A. Why just Polish.
314 Q. Can your wife talk any language but Polish?
A. Yes.
315 Q. She uses the Polish language?
A. Yes.
316 Q. Are you able to give any instruction to your children in English language?
A. No, sir.
317 Q. Are you able to tell your children anything about religion and morals in the English language.
A. Not very much.
318 Q. You don't understand that?
A. No.
319 Q. Now as for educating your children, have you contributed to the support of the parochial school in South Omaha?
A. Yes.
320 Q. Where is that?
A. St. Francis School.
321 Q. That is the parochial school in this parish where you live?
A. Yes.
322 Q. What kind of people live there generally who attend that school?
A. Polish people.
323 Q. Came from Poland about the same time you did?
A. Yes.
324 Q. Laboring men, are they?
A. Yes.
325 Q. What do they work at, what do they do down there?
A. They work in the packing house.
326 Q. And on the streets and in different ways?
74 A. Yes.
327 Q. Have you any doctors or lawyers down there?

A. Yes.
328 Q. Lawyers? Have you?
A. No.
329 Q. You are laboring people down there, are you, the people that attend the parish church are laboring people and work in the packing house?
A. Laboring.
330 Q. Have you contributed something to the school, have you given any money to it.
A. Yes.
331 Q. How much money have you given it for the purpose of supporting it?
A. I guess the children pay $2 every month.
332 Q. Did you build a school?
A. Yes.
333 Q. How much did you pay for that?
A. One hundred dollars for school paid.
334 Q. How much have you contributed to build and maintain the school aotogether?
A. Over $500.
335 Q. Do some of your children attend this school?
A. Yes.
336 Q. How many?
A. Four children.
337 Q. Do you pay something for each child going to school?
A. Yes; 50 cents each.
338 Q. Who teaches in the school?
75 A. The sisters.
339 Q. Do they speak English?
A. Yes, ma'am.
340 Q. Speak English?
A. Yes, Ma'am.
341 Q. They use both English and Polish?
A. Yes, ma'am.
342 Q. When the children start to go to school, what language do they talk first?
A. They talk only Polish.
343 Q. Nothing else?
A. No.
344 Q. When they get through the 7th or 8th Grade, what do they talk?
A. Polish and English.
345 Q. Both?
A. Yes, ma'am.
346 Q. Do they speak both Polish and English in your school?
A. Yes, ma'am.
347 Q. Do they teach religion in this school?
A. Yes, sir.
348 Q. The Catholic religion?
A. Yes.
349 Q. Reading, writing and arithmetic?

A. Yes.
350 Q. Do they speak Polish?
A. Yes.
351 Q. Do you want your children to study them?
A. Yes, sure.
352 Q. And in English?
76 A. Yes.
353 Q. Do you want your children to be instructed in religion in your school?
A. Yes, ma'am.
354 Q. Do you want your children instructed in that in whatever language they understand it, whether English or Polish, in the language that they can understand religion?
A. (No answer.)
355 Q. Do you want the children to understand their instruction?
A. I don't understand.
356 Q. I will withdraw the question.
Q. Have they been teaching Polish in your school since this law passed.
A. Yes, Polish.
357 Q. Have they been teaching Polish since last spring? Do you understand my question? Have the sisters been using any Polish in that school since the law was passed?
A. Yes, sir.
358 Q. I don't think you understand me. Have these sisters been using the Polish language, have they talked to the children in Polish since they passed this law.
A. No; they don't talk Polish.
359 Q. What effect has that had on your children in the lower grades?
A. This time in English they couldn't do nothing.
360 Q. Why couldn't they do anything.
A. They understand not the English language.
361 Q. Do you want your children to be instructed in religion in that school?

Court: Possibly he don't understand the word "instructed?

77 362 Q. Do you want your children instructed in that school, or told in that school, about religion?
A. Yes.
363 Q. Is that the purpose of it, is that what you want?
A. Yes, ma'am.
364 Q. How much is that school worth there?
A. About $10,000, the school.
365 Q. Do you know how many children go to school there?
A. I guess 460.
366 Q. Are you acquainted with the other men who live there, whose children go there?
A. Yes. They stop the Polish school and the- stop teaching school. They don't "versteh" nothing.

367 Q. If they stop teaching Polish there, the people will not patronize the school, you will not patronize the school will you?

Defendants object as incompetent and immaterial.

368 Q. Have you a list of some of the men that live there in that school district.

A. Yes. They stop the Polish school, stop the children going to school. (Showing paper.)

369 Q. Are these men Polish who when they stopped the Polish teaching and taught in English who took their children out of that school; say they will do so?

A. Yes.

Defendants object as leading. Sustained. P'ff excepts.

370 Q. Have you a card showing the record of one of your boys in your school?

A. Yes, ma'am.

371 Q. Is this Exhibit "A" one of the records for a year in that school?

A. Yes, for a year.

78 Q. For one of your children?

A. Yes, for one of your children.

Cross-examination.

By Mr. Wheeler:

372 Q. Did I understand you to say your children could not understand the English language?

A. They "versteh" English and for six or seven rooms talking English.

373 Q. How many children do you have?

A. Seven.

374 Q. What is the age of the youngest?

A. About six; two going out of school.

375 Q. How old is the oldest?

A. Sixteen, boy.

376 Q. Does he talk English?

A. Yes ma'am.

377 Q. How many of your children talk English?

A. Five.

378 Q. Can those five read and write English?

A. Yes; five can talk.

379 Q. Can the five oldest ones read and write English?

A. The oldest boys talk good English and the girl English pretty good.

380 Q. Do all your children talk Polish?

A. Yes ma'am all talk Polish.

381 Q. Every one of them?

A. Yes ma'am.

382 Q. Your wife has no trouble in giving religious instruction in Polish in the home, has she?

A. My wife talk Polish in the home.

79 383 Q. She talks Polish to the children?

A. Yes.

384 Q. The children understand her?

A. Yes ma'am.

Witness excused.

Rev. THEOBAED KALAMAJA, being called, sworn and examined testified as follows, viz:

Examined by Mullen:

385 Q. Where do you live, Father?

A. Omaha.

386 Q. How long have you lived in Nebraska?

A. I have lived here nineteen years with interruptions.

387 Q. You are a Catholic priest?

A. Yes.

388 Q. And in charge of a parish in Omaha?

A. Yes: Immaculate Conception Parish.

389 Q. Is that a Polish Parish.

A. Exclusively.

390 Q. That is not the same one John Seidlik lives in?

A. No, sir; different one.

391 Q. How many Polish parishes in Omaha?

A. Three.

392 Q. How long have you been a priest, Father?

A. Twenty-six years.

393 Q. Most of your labors in Omaha?

A. Yes, most of my labors in Omaha.

394 Q. In a general way, about how many Polish schools in this State?

A. There are, as far as I know, eleven schools in the different parts of Nebraska.

80 395 Q. The Catholic Church has parochial schools all over the State?

A. Yes.

396 Q. How many different languages used in the parochial schools in this State?

A. I think four or five.

397 Q. What are the languages?

A. Well, English, German, Polish, Bohemian schools.

398 Q. Some French?

A. I couldn't say whether we have or not. I don't know about that. These languages I have mentioned, I *j*know they have schools.

399 Q. What is the policy in the way of conducting the schools, what language do they use?

A. The language of the people that they understand, that the children understand.

400 Q. Whatever language is necessary to reach the people to teach them?

A. Yes; to reach the people.

401 Q. Are you acquainted with the conditions present in this St. Francis Parish where John Seidlick lives?

A. I am a neighbor of St. Francis. I am pretty well acquainted with conditions there.

402 Q. Have you had some knowledge of the Parish schools in the State?

A. Not all of them, no personal knowledge of them; but I have heard about them.

403 Q. You know these Polish schools in Platte county?

A. I know them pretty well.

404 Q. At Columbus and other places?

A. Yes, Omaha.

405 Q. How about Howard county?

81 A. I don't know.

406 Q. Ashland?

A. There are polish schools out there.

407 Q. Now, Father, are you acquainted with the school in St. Francis Parish?

A. Yes.

408 Q. What sisters teach there?

Q. The Franciscan Sisters. They belong to the order.

409 Q. That is an order of teachers in the Catholic Church?

A. One of the orders.

410 Q. They devote their entire life to teaching?

A. Yes. The order of sisters devote their life to hospital work and teaching. These sisters are exclusively engaged in teaching.

411 Q. Do they teach the Polish language?

A. Yes.

412 Q. And the English language.

A. Yes.

413 Q. Are they qualified teachers?

Q. They have a State certificate and——

414 Q. Do you know about the grades of study in the St. Francis School?

A. Substantially the same as mine and the grades of the State. We must cover the established grades of study of the State required by law.

415 Q. Do these graduated go into the high schools without examination?

A. They do.

416 Q. As soon as they have passed through the 8th Grade they are accepted into the high school without examination?

A. Yes.

417 Q. Have they done that in Omaha?

A. Yes.

418 Q. All the graduates of your school can enter the high school.

82 A. The Franciscas schools. That is the way of telling it.

419 Q. Do they use Polish in that school?

A. Well, we taught the Polish in my school and the St. Francis.

420 Q. The St. Francis school.

A. They taught Polish there, reading, writing; Polish history, in all the Grades, reading, writing and history; grannar, *thought* all the grades until they graduated, the Polish language gram-atically and fluently.

421 Q. Did they teach religion in Polish?

A. Yes.

422 Q. Also English in your school?

A. Yes.

423 Q. Above the 7th Grade? How is that.

A. They started to use the English language exclusively for instruction from the 6th Grade on.

424 Q. And used it for other purposes, too.

A. Yes.

425 Q. The children that come in the school, in the 2nd, 3rd, and 4th Grade-, what language do those children speak as a rule when they come to school?

A. You can say 90 of those children are not able to use one sentence in English when they start in. I have this on the authority of a teacher who taight there fourteen years in the primary Grade. She declared it would be impossible to do anything at all with the children without using the Polish language as a medium of instruction.

426 Q. What is their condition as to being able to speak English after the 6th year?

A. All leanr the language and speak it.

83 427 Q. Is Polish used there for the purpose of teaching English?

A. Certainly.

428 Q. What is the primary purpose of maintaining the parochial schools as far as the church goes.

A. As far as the church goes, our Catholic schools are maintained for the purpose of giving children a christian education—a christian education as we understand it—combined with knowledge of all secular things for every day life, together with a knowledge of christianity. An education with us does not zimply mean instruction in a language as a language, but the forming of character and the forming of the heart- of these children so that they can live as respectable people and good citizens of the country.

429 Q. With reference to that in addition to the teaching of language, what is the purpose of these parochial schools.

A. The first reason is, in most schools, the small children coming to school are unable to understand English and, therefore, we must use a language they do understand to talk to them and teach them prayers and religion. We must use the language they understand. In the higher grades as we go up we keep up the language as a matter of sentiment.

430 Q. Do you think it is the idea that the Polanders have a right to know something about the history of their ancestors?

A. I think they have a right to it. They have relatives over there and we descend from that race and naturally have a feeling for the languages and customs, and we keep up the language.

431 Q. And you want to know something about the history of the country?

A Certainly.

432 Q. Is the work of the sisters down there in teaching religion to the children supplemented *ny* the parents at home?

A. That is the purpose of the school, to help the parent keep up religion.

84 433 Q. Is that a canon or principle in force in the Catholic church requiring parents to do that?

A. I think it is the duty of parents to instruct children in the necessary knowledge of religion. That is the natural duty, and besides it is enforced by the church. There is a special provision enjoining that in all elementary schools religious instruction should be given to children according to their capacity.

434 Q. Have you the canon law here, a copy of it, to present?

A. I have.

435 Q. Can you produce it?

A. Here it is. (Producing.)

436 Q. Now what is this book?

A. Text of canon-law, ecclesiastical law.

437 Q. It is a codification of the laws of the Catholic church?

A. Yes.

438 Q. Used by you as priest.

A. Yes. It is the law for me.

439 Q. It is written in Latin?

A. *Les*; Latin.

440 Q. Can you translate or refer to the particular sections placing the obligation upon parents in the Catholic church to give religious instruction to children? What section is it, referring to parents.

A. The first canon which obliges parents to instructi children in religion is 10372 of Section 2.

441 Q. Can you translate that from Latin to English so the reporter can get it.

A. (Reading:) It is not only the right but the sacred duty of parents and also of those who take their places to care for the christian education of children.

442 Q. Is there another canon law on that subject.

85 A. Here it is about schools (consulting book), 10373, Section 1st.

443 Q. Translate that.

A. "In every elementary school religious instruction must be given to children according to their capacity."

444 Q. Now do you know whether or not the Polish language has been used in your school *school* since the law was passed.

A. In Franciscan they have not used the language.

445 Q. Do you know whether or not the failure to use the Polish language will have any effect on the value of the property.

A. I say it will have an effect.

Mr. Wheeler: Defendant moves to strike that out as not responsive.
Court: He asks you if you know. Say yes or no.

A. Yes, sir.
446 Q. Do you know what effect the enforcement of the law had with reference to the pupils in this school, stopping teaching Polish, do you know what effect it had.
A. I know, yes.
447 Q. What effect did it have.
A. It had the effect that some people were ready to withdraw their children from that school. Moreover, the child of this man that testified here has lost one year's school, almost has learned nothing; simply lost time because no Polish was taught, and the children could not learn, could not profit from the English instruction given.
448 Q. Is that true in the primary grade.
A. That is grue generally.
449 Q. Is there any way to handle your school to advantage without using the Polish language.
86 A. Not in the primary grade I don't see any.
450 Q. Is that true in the school where you are?
A. To a large extent in mine.
451 Q. The people that live in your parish are Polish people?
A. Yes.
452 Q. Immigrants who came 15 or 20 years ago.
A. About that time.
453 Q. Laboring men?
A. Yes.
454 Q. Now how do these Polish schools compare with the public schools in the same vicinity?
A. I did not institute any comparison between them; but I would judge from the results, the children who are admitted to the high school they get along with the others, as well as those finishing in the public schools. From that I would judge the schools must be on a par.
455 Q. On the question of the utility of the schools generally. The children of these men who work in the stock yards and work on the streets on the earth works they would have the same advantages with the children raised in families where the fathers and mothers are educated people in America, wouldn't they.
A. I think so. It is quite a proposition to deal with children, and that is the question of our labors, and to have the difficulty of teaching them a new language is quite a proposition for them I think they would succeed in spite of all that. I think it is one condition of their work.
456 Q. Now if this school was closed up and these children sent to the public school, what would be the situation?
A. I don't know. They would have to employ Polish
87 teachers to teach them anything.
457 Q. That is, to get any place to start with.
A. Yes, to start with.
458 Q. I call your attention to Exhibit "A," to a lot of printing on there. What is that you have in your hand in a general way.

A. It is a monthly school report, parochial school report Franciscan for the year 1920-1921.

459 Q. Now on the fact there it says what on the top.

A. Parochi*ala* school Franciscan, in South Omaha, Nebraska. Monthly report of Joseph Siedlik. 5th Grade. 1920-1921.

460 *A*. I notice it starts with "Wrzes." What is that.

A. Names of the school months, September ending with June.

461 Q. What are those marks there.

A. The number of days attendance in school per month. Sixteen in September; 21 in October; 20 in November, etc.

462 Q. First it is attendance. What i*f* next.

A. Days absent. Next column is attendance at Holy Mass.

463 Q. Do you have mass in the school.

A. In the church.

464 Q. That is a duty of the scholar.

A. The children are free on week days to attend services or not, but they get marked for their attendance in order to encourage them to go. The next is conduct; application, religion subject of instruction. Next, arithmetic; next is Polish reading; Englizh reading; spelling; history of the U. S.; grammar; geography; physiology; composition; civil government; penmanship; music. The last is the average.

465 Q. Over here there is a name signed. Whose is that?

A. The signature of the father.

466 Q. After every month?

88 A. Yes, every month. This report is to be presented to the father and he signs it.

467 Q. Down at the bottom, whose is that.

A. That is the father's below is the teacher's.

468 Q. The name of the sister?

A. Yes.

469 Q. What is on the back.

A. That is an account of school dues.

470 Q. Those figures indicate the amount paid?

A. The first indicated the month and the payment of 50 cents a month for thzt child, and a receipt for receiving the money by the sister who is the teacher.

Mr. Mullen: We offer in evidence Exhibit "A."

Court: Is that signed by one of the teachers.

Mr. Mullen: Yes.

Mr. Mullen: Is this card similar to the cards used in that school.

A. This is one of the cards.

Q. Is that the kind they use generally down there.

A. Yes; it is. They may have different forms, but the substance is more or less the same.

Exhibit "A" not being objected to is here set out as follows.

(Here follows Exhibit "A," School Report Card, marked page 88½.)

Ex A. 87½

SZKOŁA PARAFIALNA św. FRANCISZKA

W SOUTH OMAHA, NEBR.

Miesięcz. Zaświad. Josef Siedlik *Klasa* 5 *Rok* 1920-21

	Dni Nauki	Dni Nieobecne	Obec. na Mszy	Obyczaje	Pilność	Religia	Rachunki	Czytanie Polskie	Czytanie Angielskie	Sylabizowanie	Historya St. Zied.	Gramatyka Angielska	Geografia	Fizyologia	Komp.-sycya	Rząd Cywilny	Kaligrafia	Muzyka	Średnia Miara	PODPIS RODZICÓW LUB OPIEKONÓW
Wrześ.	16	0	16	2	1	2	3	2	3	2	—	3	2	—	3	—	3	4	76	Jan Siedlik
Paźdz.	21	0	21	1	1	2	2	2	2	1	—	2	2	—	3	—	2	3	87	Jan Siedlik
List.	20	1	19	1	1	2	2	1	2	1	—	2	2	—	3	—	2	3	86	Jan Siedlik
Grudz.	12	0	12	1	1	1	2	2	1	2	—	2	1	—	2	—	2	3	91	Jan Siedlik
Stycz.	20	0	19	1	1	1	2	2	2	2	—	2	1	—	2	—	2	2	91	Jan Siedlik
Luty	19	½	18	1	1	1	2	1	2	1	—	2	1	—	2	—	2	—	93	Jan Siedlik
Marzec	16	0	16	1	1	1	2	1	1	1	—	2	1	—	2	—	2	—	93	Jan Siedlik
Kwiec.	20	0	20	1	1	1	2	—	1	2	—	2	1	—	2	—	2	—	94	Jan S
Maj	19	1	18	1	1	2	1	—	1	2	—	2	1	—	2	—	1	—	91	½ Jan S.
Czer.	8	0	8	1	1	1	1	—	1	2	—	2	1	—	2	—	1	—	91	

STOPNIE

1. Bardzo Dobrze
2. Dobrze
3. Dostatecznie
4. Niedostatecznie.
5. Zle.

Ks. Proboszcz Michał J. Gluba

Nauczycielka Siostra M. Serafia

Past

SZKOLNEGO ZALEGA

		Podpis Osoby Odbierającej Pieniądze
Wrześ.	50	Sr. M. Serafia
Paźdź.	50	Sr. M. Serafia
List.	50	Sr. M. Serafia
Grudz.	50	Sr. M. Serafia
Stycz.	50	Sr. M. Serafia
Luty	50	Sr. M. Serafia
Marz.	50	Sr. M. Serafia
Kwiec.	50	Sr. M. Serafia
Maj	50	Sr. M. Serafia
Czerw.	50	Sr. M. Serafia

Rodzice powinni pilnie przejrzeć świadectwo nim takowe zwracają napowrót do szkoły. Przezto dzieci mogą dopilnować w nauce, uczęszczaniu do szkoły, sprawowaniu i pilności.

89 Questions by Judge Albert:

471 Q. That canon law which you quote is real law? based on one of the admonitions of one of the apostles, isn't it?, to parents to "bring up their children in the fear of the Lord."

A. Yes, it is based on our faith in the teachings of the Lord.

472 Q. Was it not one of the early admonitions of the apostles.

A. Indeed it was.

473 Q. For the parent to bring up the child in the fear of the Lord?

A. Yes.

Cross-examination.

By Mr. Wheeler:

474 Q. Were the subjects mentioned in Exhibit "A" taught in English or Polish?

A. Taught in English or Polish; all taught in English except Polish reading, etc.

475 Q. Where were you born?

A. I was born in the province of Posen, a part of Poland, under the Russian rule.

476 Q. And you were brought up in the Polish language.

A. Yes, and also German. We are taught in Polish and German in the old country.

477 Q. W*neh* did you commence to study English?

A. When I entered college about 16 years old.

478 Q. You had no particular difficulty in mastering English if you did not commence to study it until you were sixteen?

A. I picked up some English in the parochial school where I attended for one year, and on the street, of course.

479 Q. Your experience would lead you to believe that it is possible to learn a foreign language after a child is 16 years old.

90 Mr. Mullen: The court will take judicial knowledge of that. This is nonsense.

Court: You may answer.

Defendants except.

A. Oh, of course it is possible.

480 Q. Did I understand you to say that you consider it necessary to use Polish to teach English to a Polish child?

A. I do, to a Polish child who don't understand any English.

481 Q. Have you had any practical experience in the vocation of a language teacher.

A. I taught latin at college for sometime, if that would be counted as experience.

482 Q. Have you ever heard of the Berlitz System of Teaching a foreign language?

A. No; I have not.

483 Q. Have you ever heard of a system of teaching language by the use of a foreign language alone?

A. Maybe there is such a system; but I think it would be an awful hard thing to do.

484 Q. Do you not know of night schools in New York City where English is taught to foreigners by the use of English alone?

A. It may be.

485 Q. Are the number of pupils in the Franciscan school increasing or decreasing?

A. The last year I could not very well see much difference in it; because it is two years ago that a new parish was formed from this parish, therefore about 200 children were kept from that parish. But last year they had, as it was said here about 400 children, how many they will have this year I don't know. They are just enrolling them now.

91 Redirect examination.

By Mr. Mullen:

486 Q. How many languages do you speak.

A. I speak three pretty well.

487 Q. English, German and Polish.

A. Yes.

488 Q. And you read French?

A. Read French.

489 Q. And Latin?

A. Yes; and a little Greek.

490 Q. How did it come you studied German?

A. I was forced to study German.

491 Q. The Prussians forced the study of German in Poland, did they?

A. Yes.

Witness excused.

Mr. Mullen: That is our case.

Judge Albert: And we rest.

C. A. BECKER, being called on the part of the defendants, sworn and examined, testified as follows:

Examined by Mr. Wheeler:

Judge Albert: The plaintiff now objects to any testimony in support of the allegations contain- under the caption "For a separate defense," the first paragraph which is marked 7; for the reason that the court takes judicial notice of the matters set up, and evidence thereon is not admissible.

Court: I don't know that the attorney is offering anything on that.

Judge Albert: Well, we object at this time to any evidence in support of that matter to head it off.

Ex. B

DARIUS M. AMSBERRY
SECRETARY OF STATE

WILLIAM L. GASTON
DEPUTY

State of Nebraska

SECRETARY OF STATE

I, DARIUS M. AMSBERRY, SECRETARY OF STATE, OF THE STATE OF NEBRASKA,

DO HEREBY CERTIFY THAT

The "NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD of MISSOURI, OHIO and OTHER STATES" have no articles of incorporation on file in this department and that the said "NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD of MISSOURI, OHIO and OTHER STATES" is not a [illegible]

SECRETARY OF STATE

I, DARIUS M. AMSBERRY, SECRETARY OF STATE, OF THE STATE OF NEBRASKA,

DO HEREBY CERTIFY THAT

The "NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD of MISSOURI, OHIO and OTHER STATES" have no articles of incorporation on file in this department and that the said "NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD of MISSOURI, OHIO and OTHER STATES" is not a corporation of record in this office.

That the "NEBRASKA DISTRICT OF THE GERMAN EVANGELICAL LUTHERAN SYNOD of MISSOURI, OHIO and OTHER STATES" filed articles of incorporation in this department January 14, 1904, and that the same are recorded in Book "Z" at page 545 Non-Profit Corporations.

That no amended articles of the "NEBRASKA DISTRICT OF THE GERMAN EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO and OTHER STATES" and changing the name of the "NEBRASKA DISTRIC OF THE GERMAN EVANGELICAL LUTHERAN SYNOD of MISSOURI, OHIO and OTHER STATES" are on file in this office.

In Testimony Whereof, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE GREAT SEAL OF THE STATE OF NEBRASKA. DONE AT LINCOLN, THIS 9th DAY OF August IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND twenty-one, AND OF THE INDEPENDENCE OF THE UNITED STATES THE ONE HUNDRED AND FORTY-sixth AND OF THIS STATE THE FIFTY-fifth

(SEAL)

D. M. Amsberry
SECRETARY OF STATE

W. L. Gaston
DEPUTY

FEE

93

Mr. Wheeler: That is what the evidence relates to.

92 Court: I want to be fair in this offer. Make your offer.

Mr. Wheeler: I propose to offer through this witness evidence tending to sustain the allegations contained in defendant's Answer under the caption of Separate Defense, consisting of paragraphs 7 to 10 of said Answer, and to show by this witness the situation existing at Emerald, Nebraska, and to show in said community the use of English was prohibited in religious exercises, although many parents desired to participate in said religious exercises, and did not desire to have their children learn German before they learned English, and that in this specific church the church services in English were specifically prohibited.

Judge Albert: What is the *ultimate* object? Is it to show facts in justification for the litigation.

Mr. Wheeler: Yes, sir.

Judge Albert: We object to it; for the reason that the conditions justifying, or failing to justify, are matters of which the court will take Judicial notice, and evidence thereof is not admissible.

Mr. Mullen: It is incompetent, irrelevant and immaterial.

Judge Albert: And object because the constitutionality of the law is not to be determined upon questions of fact, but is to be determined by the court.

Court: The court sustains the objection, first, because the matters offered are those that the court takes judicial notice of; second, the legislature is presumed to have some reason for passing its legislation; third, the offer is matters pleaded.

(Defendant excepts.)

Mr. Mullen: We object for the same reason on behalf of the intervenor.

(Same ruling. Exception.)

Mr. Wheeler: We offer Exhibit "B," certificate of the secretary of State.

(Here follows Exhibit "B," marked page 93.)

94 Judge Albert: Objected to for the reason that it is incompetent and immaterial and not in issue in this case.

Mr. Wheeler: We have denied in our Answer that there is such a corporation as the Nebraska District of the Evangelical Lutheran Synod, the name being "Nebraska District of the German Evangelical Lutheran Synod, etc."

Court: I will admit the evidence, however that matter may be.

Mr. Reed: We offer these three depositions in evidence (producing same).

Judge Albert: They are offered for the same purpose, I think, that the testimony of the witness was offered for. I have glanced over the depositions and cannot see any other purpose that they serve.

Mr. Reed: They have to do with the method of teaching in parochial schools, and concerning which the plaintiff- *has* introduced the most of their evidence.

Judge Albert: We object because they were not filed one day before the trial.

(Recess at this point.)

Court again in session.

Judge Albert: The objection of the depositions not being filed in time is waived. But we do object to them for the reason that they could only serve one purpose, or two purposes: One is, to show the condition of the schools, the abnormal conditions in certain
95 localities; and the other is, to attempt to justify the legislation, and they are not admissible for that purpose. Evidence of isolated delinquencies would have no bearing on the case.

Mr. Reed: We think all this evidence you have introduced is immaterial as to the efficiency of the school. I think that kind of evidence is immaterial.

Court: I think a great deal of that evidence is immaterial as to the efficiency of the schools; but I have allowed that kind of evidence on the part of the plaintiff and I will allow this evidence to be introduced on the other side.

Mr. Reed. We offer the deposition of Lillian Baldridge.

(Same read to the court without objection, and is hereto attached.)

Mr. Wray: We move to strike out the testimony of the witness Lillian Baldridge; for the reason that it is incompetent, irrelevant and immaterial, because it relates to only one of the parochial schools of the plaintiff in this State and does not reflect the conditions as to the other schools of the State, and because the matters and conditions presented are presumed to have been existent or to have been before the legislature before the laws were passed; because the matters are matters of which the court will take judicial notice of, and, further, because the constitutionality of the law is not to be determined on a question of fact, but is to be ascertained by the court.

Motion overruled. Plaintiff excepts.

96 Mr. Reed: We offer the deposition of Ada M. Halderman.

Same read to the court and same motion made to strike as made to the deposition of Lillian Baldridge. Motion overruled. Plaintiff excepts.

(This deposition is hereto attached.)

Mr. Reed: We offer the deposition of C. M. Matheney.

Same read to court same objection as above made and same overruled. Plaintiff excepts.

(This deposition is hereto attached.)

State rests.

Rev. C. F. BRUMMER, being recalled on part of plaintiff, testified as follows, viz:

Examined by Mr. Mullen:

492 Q. The name of this ecclesiastical corporation plaintiff was correctly the German Evangelical Luthern Synod, District of Nebraska?

A. Yes.

493 Q. The word "German" was formerly in the title?

A. Yes.

494 Q. In April, 1917, the proposition was put forward to eliminate that word, I believe?

A. The new constitution was submitted to the general synod in June, 1917, at Milwaukee, and it was adopted; but before any change could be made in the constitution the new constitution had to be submitted to each individual congregation belonging to the synod, and the result had to be reported to the next meeting after three years, and they adopted the new constitution in 1920.

495 Q. And since that time you have gone under the name of the Nebraska District of the Evangelical Lutheran Synod?

A. Yes. Here is the official title (showing some paper).

97 Mr. Wheeler: The defendant moves to strike out all the evidence introduced by the plaintiff in this case. I believe all the evidence was directed to the reasonableness or unreasonableness of this law. If our proposed evidence should go out, plaintiff's evidence should also go out.

Court: A great deal of it is subject to that objection; but I don't know how to segregate it. I think the motion will have to be denied at this time.

(Def't excepts.)

Mr. Wheeler: The defendant moves that the petition of the Nebraska District of the Evangelical Lutheran Synod of Missouri, Ohio and other states, plaintiff, be denied as it is not shown to have any capacity to sue as plaintiff.

Court: I think I will overrule that also.

Defendant excepts.

Plaintiff rests.
Defendant rests.

I, Wm. E. Butler, reporter 6th district of Nebraska, hereby certify that I was present and made a full, true and correct report of all the testimony, objection, motions, rulings and exceptions in this case at the time of the trial.

And I further certify that the above and foregoing 69 pages of typewriting comprise a full, true and correct — of my report so made as aforesaid.

Dated Fremont, October 4, 1921.

WM. E. BUTLER,
Reporter 6th District, Nebraska.

98 In the District Court of Platte Coun*rt?* Nebraska.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES, DIEDERICK SIEFKEN, Plaintiffs.

vs.

SAMUEL R. MCKELVIE, CLARENCE A. DAVIS, AND OTTO F. WALTER and Their Deputies, Subordinates, and Assistants, Defendants.

Depositions.

Depositions of sundry witnesses taken before me, A. R. Honnold, notary public within and for Scotts Bluff County, Nebraska, on the 29th day of August, 1921, between the hours of 9 a. m. and 4 p. m., at the office of A. R. Honnold, First National Bank Building, Scottsbluff, in said county, pursuant to the attached notices, to be read in evidence on behalf of the defendants in the above entitled case.

LILLIAN BALDRIDGE of lawful age, being by me first duly examined cautioned and solemnly sworn as hereinafter certified deposeth and sayeth as follows:

99 Q. State your name?
A. Lillian Baldridge.
Q. What*O*is your occupation?
A. Housekeeper and school teacher.
Q. How long have you taught school.
A. 25 years.
Q. What kind of a certificate do you hold?
A. Life State.
Q. Where are you teaching?
A. Scottsbluff, Nebraska.
Q. How long have you taught here?
A. 5 years.
Q. What work do you teach?
A. Principal of the West Ward.

Q. Have you ever had occasion to observe the parochial schools operated in Scottsbluff by the Evangelical Lutheran Church?

A. I have.

Q. What was the occasion of your observation?

A. I was appointed as a memeber of the committee by the board of education, to investigate this school.

Q. What did you find there?

A. I found the instruction of a very inferior class, the text books were out of date and note up to the standard of the public schools.

Q. Did you find them teaching or instructing anything in German?

A. The closing exercises were in German. We found a number of German charts in the primary department.

Q. What was their equipment to teach the primary work as compared with the equipment in the public school of Scottsbluff.

A. I would say there was none and no training on the part of the instructors for primary work.

100 Q. Are you acquainted with the equipment and the course of work laid out for primary instruction in the public schools of Nebraska?

A. I am. I have supervision of the primary departments.

Q. Was there any place in the primary work in the parochial schoo- here when you investigated that was up to the standard of our public schools?

A. None whatever.

Q. How many children did they have in the primary department of the parochial school?

A. About 75.

Q. How many teachers did they have for those?

A. One.

Q. Were they all in one room?

A. They were.

Q. Describe the primary work as they were conducting it there.

A. The text books were very much out of date and the methods used were such of those of 50 years ago.

Q. What is the equipment for primary work in the public schools of Scottsbluff?

A. Where they had one textbook for reading the Scottsbluff public schools have at least ten primers and first readers of different authors. The Aldine method of teaching reading is used in the Scottsbluff schools. In the first grade the average number of pupils is about 35 to a teacher. They are in separate rooms. They seemed to be making an effort to teach by the phonetic methods in the Parochial schools and did not seem to know how.

Q. Did you make any investigation as to the amount of civics and history which they taught?

A. I did.

Q. What did you find?

A. I found no history textbooks in any of the grades. No attempt at teaching civics or citizenship.

Q. What is the course of study of history and civics in the schools of Scottsbluff?

101 A. We begin the teaching of history by textbooks in the 4th grade by using the supplementary readers. We have a course in citizenship from the 1st grade up, through all of the grades.

Q. How many grades were they teaching in the parochial school of Scottsbluff?

A. I would say seven grades.

Q. You were able to find no history work of the United States; no civics and no citizenship work being taught in any of those seven grades.

A. I was not.

Q. Were there any pictures of American's prominent men in the schools such as Washington and Lincoln?

A. There were none that I saw.

Q. Were you in all of the rooms which they had?

A. I was.

Q. Did you see an American flag in any of their school rooms?

A. I did not.

Q. How many rooms did they have there?

A. Three.

Q. And how many teachers?

A. Three.

Q. And how many pupils to the entire seven grades?

A. About 150.

Q. What is the practice in the public schools as to teaching respect for the flag and matters of that kind?

A. There are daily lessons given in citizenship and patriotism, from the primary up.

Q. At the time the parochial school was closed last year were any of their pupils brought to the West Ward School of which you are principal.

A. There were.

Q. Referring to the older ones what was their understanding of the English language, their ability to speak and write it as

102 compared with pupils who had received their instruction in the public schools of Scottsbluff?

A. I did not have any.

Q. Did you receive any from the primary grades?

A. About 40.

Q. What was their relative standing and knowledge of the English as compared with pupils of the same age who had been in the American schools?

A. They had to be started from the beginning.

Q. Did those whom you received show any desire to take part in patriotic exercises which you held in your school?

A. They did.

Q. What was their conduct?

A. They were given daily exercises in patriotism such as the saluting of the flag and the singing of patriotic songs and did it in an enthusiastic manner.

Q. How did they enter into the play with the American children?
A. They do not know how to play. The younger pupils were soon trained to take part and enjoyed it. The older children were slow to enter into the games.
Q. Did the older children show any desire to mingle with the American children?
A. Not at first.

LILLIAN BALDRIDGE.

ADA M. HALDERMAN, being by me first duly sworn examined and cautioned as hereinafter certified deposeth and sayeth as follows:

103 Q. What is your name?
A. Ada M. Halderman.
Q. What is your occupation?
A. County superintendent of schools, of Scotts Bluff County, Nebraska.
Q. How long have you been county superintendent?
A. Nearly seven years.
Q. As county superintendent have you visited and investigated the parochial school maintained by the Evangelical Lutheran Church?
A. I have.
Q. At the beginning of the last school year how many schools were they operating in Scotts Bluff County and where were they located?
A. Three, Scottsbluff, Gering and near Minatare (A. M. H.).
Q. When did you first visit these schools? Last year?
A. In the fall and winter of 1920 (A. M. H.).
Q. Are you acquainted with the course of study prescribed by the state of Nebraska for Public school work?
A. I am.
Q. Were the schools maintained by the Evangelical Lutheran Church identical with and equal to the public schools of this state?
A. They were not.
Q. In what way were they not?
A. Equipment, sanitary measures, texts, library, instruction, standards, number of pupils to a teacher, grading, hours, time spent on regular textbook work, seating, lighting, heating, organization for play, training of teachers, for primary work especially.
Q. In the matters which you have referred to were the parochial schools superior or inferior to the public schools?
104 A. They were inferior.
Q. Explain in detail wherein the parochial school was inferior to the public school in the matters to which you have referred.
A. Scottsbluff school: One room was small, poorly ventilated; text books and library facilities insufficient, instruction in the intermediate rooms was by the temporary minister-teacher brought in from Alliance and apparently little trained for teaching school. In the primary room there were too many pupils to the teacher and the

instruction was entirely inadequate, showing lack of training on the part of the teacher and the lack of a proper understanding of the methods he was to teach. In temperament he was not chosen for his understanding and sympathy for little children. The standards were far below those of the public schools in plan and execution.

Gering: School composed of city and rural pupils, 40 in all under one teacher, including five or six grades. Equipment and texts equal rural to those found in an average school. Attention to primary work was [is]* fairly good; since the Gering schools were badly crowded, no attempt was made to put the Gering children into their own graded schools last year. Results in this school were in general those to be found in a similar rural school.

Minatare: School held in a church. The seats were the church benches with hinged desks. They were all the same size. Many children had their feet several inches clear of the floor all day. They sat five or six in one seat, moving when necessary to let the inside ones out. There were cross lights. The rooms was fairly heated by means of a large stove. Other equipment fair. No playground apparatus and no sanitary water supply. No attention to the physical examination of pupils. Some texts were out of date. Little attention given to primary methods. First 15 minutes of the program given to religious instruction. Confirmation class was held before about
105 the opening of school. All children of all grades came at ∧ rural (A. M. H.) and town
the same time [as]* rural districts and remained at school from about 8:30 to 4:00 or after. Children when not reciting sat in poorly fitted seats. They wore their wraps, coats and overshoes and whenever they wished. No attempt was made to let these children have exercise except at regular intermission. The[y]* teacher who was also the minister was absolutely untrained in primary methods; although
— apparently possessing a native sympathy for cholдren. He did not know that his pupils were far below standard and would not have known how to remedy the condition if he knew their deficiencies. Bright class of primary pupils were simply marking time and learn- that was (A. M. H.)
ing how to be lazy. One set of readers for a grade was all ∧ provided. Some of these were printed many years ago, especially for parochial schools, and showed no development of primary reading principles. The only busy work provided for primary pupils was copying which was skillfully done and the meaning of the words little understood. 48 pupils in six grades including about one half Minatare pupils and one half pupils from rural districts were gathered in this school.

In order to bring the school up to standard, additional equip-

[*Words in brackets erased in copy.]

nent and an extra teacher were provided during the holidays, all lasses being held in the same room as before. The second teacher iven in charge of the primary pupils was the same one who was be- ow standard in Scottsbluff. While the school showed improvement he unanimous opinion of a committee composed of two city super- ntendents, an ex-city superintendent, grade principal, county super- ntendent, and a school-board member who had taught for several ears was that the school was still far below the standard of the linatare school in equipment, teacher-training, division of classes, rganization, sanitary devices, sympathy with child life, the standard toward play, time for individual classes, and general results.

06 The Gering school was permitted to retain the same pupils last year because of the over-crowded condition of the Gering chools during the construction of new buildings. The Scottsbluff chool could not come up to standard of the graded schools and losed their doors for the holidays. The Minatare school was so nuch superior to the parochial school nearby that the town (A. H.) upils were required to leave the parochial school and enter the own school and giving them four months to bring up the parochial chool to the standards required by the state superintendent for ublic schools. Owning to the over-crowded conditions in two or hree rural schools from which the remaining pupils of the arochial school had come the rural pupils were permitted to re- nain for the rest of the year in the parochial school.

Q. In those districts where the children of the Russian and erman parentage attend the public schools what is the number of Russian and German children compared with the American parent- ge children?

A. In nine of the beet-growing districts I find 303 out of 423 nrolled in December were Russians and Germans.

Q. That is, you mean they were of Russian or German parentage?

A. Yes.

Q. What schools do these figures cover?

A. District 5, 8, 17, 20, 24 North, 24 South, 29, 39, 50.

Q. Are any city schools included?

A. No.

Q. Are there any parochial schools included?

previously in the year (A. H.)

A. No, although many pupils from these districts have ∧ gone into he parochial schools.

ADA M. HALDERMAN.

C. M. MATHENY, being by me first duly cautioned, examined and olemnly sworn as hereinafter certified, deposeth and sayeth as ollows:

107 Q. What is your name?

A. C. M. Matheny.

Q. What is your occupation?

A. I have been superintendent of the public schools of the city of Scottsbluff for the past eight years.

Q. During that time have you had occasion to observe the parochial school operated in Scottsbluff by the Evangelical Lutheran church.

A. Yes, I have.

* * * * * * *

Q. How often have you investigated that school and visited it?

A. Several times each year, during my superintendency in the city.

Q. How long was this school in operation in Scottsbluff?

A. I found it operating when I came here eight years ago and it so continued till the year before last and was again re-opened last fall.

Q. What equipment did they have for teaching the common branches?

A. Their equipment was furnished by the Concordia Publishing Company of St. Louis, their church publishing firm, for this synod. This equipment is antiquated and has in no sense been kept up to (of the public schools, Generally one reader only is furnished) the standards and principles and methods for a grade, carrying the publishing date of 1884. There were charts or combination of English and German and date back over a period of 25 years, In no sense are the material and method of these texts modern and up to the standard of those furnished in the public schools.

Q. What are their facilities for operating a school during the time that you were superintendent in Scottsbluff? And compare them with the facilities of the public schools of Scottsbluff?

A. Their rooms are poorly heated and badly ventilated, in fact they have no modern method of ventilation installed. The 108 seats were hand-made and not of size fitted to the children of different ages. Books and other teaching equipment were entirely inadequate. Playground and toilet facilities would not meet the standard set by the state department. Teachers were not trained for grade work. They send out their young ministers in training to the schools of this church. These men have had no preparation in the teaching of primary children and fail utterly from the standpoint of instruction and sympathy with young childhood. Their rooms have been overcrowded, composed of two to three grades and enrolling 50 to 75 children.

Q. During the time that you were superintendent of Scottsbluff was this parochial school ever operated up to the standard of the city schools and was the course of study equivalent to that of the city of Scottsbluff?

A. It was not.

Q. What was finally done with this school?

A. It was closed voluntarily last December.

Q. And why?

A. This school failed to meet the standard as laid down by the law of the state.

Q. Did the pupils from the parochial school then come into the schools of Scottsbluff?

A. They did.

Q. Were they able to go ahead with the work in the public schools with children of their own age and grade?

A. They were not.

Q. Why?

A. Their previous method of instruction, knowledge of English, and adaptability made it impossible for them to be classified in the same grades as in their own school.

Q. How far were they demoted below their grades in order
109 to start them into the public schools?

A. It was necessary in nearly all cases to put them back one grade and in the first grade start them at the beginning.

Q. Of the German-Russian children who came into the public schools without a period of training in the parochial school, what was their average ability to grasp the work as compared with the American children?

A. It was on a par with that of the American child.

Q. Was that true of the children who had first been trained in the parochial school and if not in what way did they differ?

A. It was not. Evidently the method and instruction given these children in the parochial school had been such as to make it impossible for them to adapt themselves to the classroom work of the public school.

Q. Have you observed the children of Russian and German parentage who have been trained in the public schools as to their willingness to mingle with the American children?

A. I have.

Q. Did they differ in any way from the American children in their willingness to associate and play with American children?

A. I find no difference.

Q. What was true as to the children who had been trained in the parochial school and who later came to the public school?

A. It was largely a matter of inability to mingle with American children, their teaching and training having been such as to make them unwilling to associate with American children.

Q. Did they teach anything of American history and civics in the parochial school in Scottsbluff?

A. I made several inquiries of their head teacher as to
110 this and he was planning at the time the school was closed last December to secure text books for this purpose, but at that time such had not been secured.

Q. Was there any training or teaching given in American citizenship?

A. None that I know of.

Q. What was the attitude of the parents of these children toward sending them to the public schools?

A. Large numbers of them told me personally that they would much prefer to have their children in the public school but that the church officials required them to attend this school in order to be confirmed.

Q. Are you a graduate of any college or university?

A. I hold my B. Ped. from the Ohio University, and My M. A. from the Ohio State University.

Q. How long have you been in the profession of school teaching and school work?

A. About 25 years. C. M. MATHENY.

111 STATE OF NEBRASKA,
County of Scotts Bluff, ss:

I, A. R. Honnold of the County of Scotts Bluff and State of Nebraska, a Notary Public, duly commissioned and qualifie- for and residing in said county, do hereby certify that Lillian Baldridge, Ada M. Halderman and C. M. Matheny were by me severally sworn, to testify to the truth, the whole truth and nothing but the truth, and that the depositions by them respectively subscribed as above set forth were reduced to writing by B. G. Johnson who is not interested in the suit in my presence and in the presence of the witnesses respectfully, and were respectively subscribed by said witnesses in my presence and were taken at the time and place in the annexed notice; that I am not counsel, attorney, or relative of either party or otherwise interested in the event of this suit.

In testimony whereof I have hereunto set my hand and affixed my Notarial Seal this 29th day of August, 1921.

[SEAL.] A. R. HONNOLD,
Notary Public.

My commission expires May 6, 1922.

112 In the District Court of Platte County, Nebraska.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF Missouri, Ohio, and Other States and Diederick Siefken, Plaintiffs,

VS.

SAMUEL R. MCKELVIE, CLARENCE A. DAVIS and OTTO F. WALTER, and Their Deputies, Subordinates, and Assistants, Defendants.

Notice to Take Depositions.

You will please take notice that the undersigned will, on behalf of the defendants in the above entitled action, take the depositions of C. M. Matheny, Lillian Baldridge, and Ada M. Haldeman, residents of Scotts Bluff County, Nebraska, at nine A. M. on the twenty-ninth day of August, 1921, at the office of and before A. R. Honnold, Notary Public, First National Bank Building, Scottsbluff, Nebraska, for use in the trial of the above entitled action.

CLARENCE A. DAVIS,
Attorney General,
Attorney for Defendants.

To
Albert & Wagner,
Sandall and Wray,
A. F. Mullen,
Attorneys for Plaintiffs.

Service of copy of within notice is hereby acknowledged this 23rd day of August, 1921.

SANDALL & WRAY,
Attorney for Plaintiffs.

113 Endorsed: In the District Court of Platte County, Nebraska. Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other States, and Diederick Siefken, Plaintiffs, vs. Samuel R. McKelvie, Clarence A. Davis, and Otto F. Walter, and their deputies, subordinates and assistants, Defendants. Notice to take depositions.

In the District Court of Platte County, Nebraska.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES AND DIEDERICK SIEFKEN, Plaintiffs,

vs.

SAMUEL R. MCKELVIE, CLARENCE A. DAVIS AND OTTO F. WALTER, and Their Deputies, Subordinates, and Assistants, Defendants.

Notice to Take Depositions.

You will please take notice that the undersigned will, on behalf of the defendants in the above entitled action, take the depositions of C. M. Matheny, Lillian Baldridge, and Ada M. Haldeman, residents of Scotts Bluff County, Nebraska, at nine A. M. on the twenty-ninth day of August, 1921, at the office of and before A. R. Honnold, Notary Public, First National Bank Building, Scottsbluff, Nebraska, for use in the trial of the above entitled action.

CLARENCE A. DAVIS,
Attorney General,
Attorney for Defendants.

To
Albert & Wagner,
Sandall & Wray,
A. F. Mullen,
Attorneys for Plaintiffs.

114 Service of copy of within notice is hereby acknowledged this 23rd day of August, 1921.

SANDALL & WRAY,
A. F. MULLEN, AND
ALBERT & WAGNER,
Attorneys for Plaintiffs.

Endorsed: In the District Court of Platte County, Nebraska. Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other states, and Diederick Siefken, Plaintiffs, vs. Samuel R. McKelvie Clarence A. Davis and Otto F. Walker, and their deputies, subordinates and assistants, Defendants. Notice to take Depositions. Filed Oct. 18, 1921. Ethel Gossard, Clerk, by Edward F. Graf, Dp.

Endorsed: 22424. Nebraska District of Evangelical Lutheran Synod vs. McKelvie. Bill of Exceptions. Supreme Court of Nebraska. Filed Oct. 22, 1921. H. C. Lindsay, Clerk.

115 And afterwards, to wit, on the 28th day of November, 1921, there was filed in the office of the Clerk of said Supreme Court a certain Application, in the words and figures following, to wit:

In the Supreme Court of Nebraska.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF Missouri, Ohio, and Other States and Diederick Siefken, Plaintiffs, Appellees,

vs.

SAMUEL R. MCKELVIE, CLARENCE R. DAVIS and OTTO F. WALTER, and Their Deputies, Subordinates, and Assistants, Defendants, Appellants.

Application of the American Legion, Department of Nebraska, for Leave to Appear as Amicus Curiæ.

Comes now The American Legion, Department of Nebraska, a corporation, and respectfully moves the Court, that leave be granted said American Legion, Department of Nebraska, to appear as amicus curiæ in the above entitled cause for the purpose of filing briefs, submitting argument and making such suggestions as may from time to time appear to be proper as to the issues of law raised and involved, and as to the application of sound legal principles to the facts and issues in said cause, basing its request upon the following reasons:

1. That The American Legion, Department of Nebraska, is a corporation, duly organized and existing under and by virtue of the laws of the State of Nebraska, the members of said American Legion, Department of Nebraska, numbering approximately 20,000, being composed of honorably discharged soldiers, sailors and marines of the United States Army or the United States Navy in Nebraska, who were in the military or naval service of the United States during the so-called World War, between the dates April 6, 1917 and November 11, 1918, and the organization of said American Legion, Department of Nebraska, by said honorably discharged soldiers, sailors and marines of the United States Army or the United States Navy, was effected and now exists, as expressed in the preamble of
116 the constitution of said American Legion, Department of Nebraska, with principles, aims and purposes as follows:

"For God and Country, we associate ourselves together for the following purposes:

"To uphold and defend the Constitution of the United States of America; to maintain law and order; to foster and perpetuate a one

hundred per cent Americanism; to preserve the memories and incidents of our association in the Great War; to inculcate a sense of individual obligation to the community, state and nation; to combat the autocracy of both the classes and the masses; to make right the master of might; to promote peace and good will on earth; to safeguard and transmit to posterity the principles of justice, freedom and democracy; to consecrate and sanctify our comradeship by our devotion to mutual helpfulness."

2. That pursuant to said principles, aims and purposes, The American Legion, Department of Nebraska, became interested in the passage by the Legislature of the State of Nebraska, at its regular session in the year 1921, of the act so passed by said Legislature, and subsequently approved by the Governor of said state, "to declare the English language the official language of this state, and to require all official proceedings, records and publications to be in such language and all school branches to be taught in said language in public, private, denominational and parochial schools; to prohibit discrimination against the use of the English language by social, religious or commercial organizations; to provide a penalty for the violation thereof; to repeal Chapter 249 of the Session Laws of Nebraska for 1919, entitled; 'An Act relating to the teaching of foreign languages in the state of Nebraska' and to declare an emergency"; the text of said act being fully set out in paragraph VII of the petition of plaintiffs herein; and during said regular session of said Legislature pursuant to said interest in the said passage of said act, The American Legion, Department of Nebraska, by its duly elected and qualified officers and regularly appointed committees,
117 peared, in manner and form according to law, before the various committees of said Legislature of the state of Nebraska, having said act then under consideration, and represented to said committees of said Legislature, the advantages and benefits to be derived from and by the passage of said act.

3. That The American Legion, Department of Nebraska, made application in the District Court of Platte County, Nebraska, for leave to appear in said Court in the above entitled action, as a friend of said Court for the purpose of filing briefs and submitting arguments in support of said act, and that such leave was granted The American Legion, Department of Nebraska, and such appearance was made by it in said Court.

4. That The American Legion, Department of Nebraska, now actuated solely by the aforesaid principles, aims and purposes, and with the same interest in said act as heretofore, believing that said act is in harmony with the adopted and announced principles, aims and purposes of said American Legion, Department of Nebraska, all as aforesaid, and that the enforcement of said act will be most advantageous to the State of Nebraska, and the citizens thereof, and most conducive to the promulgation of and training in the principles of good citizenship and that it is calculated to promote loyalty to the traditions, ideals and institutions of the American Republic,

and to insure the safety of the government of the United States, desires as a friend of this Court, if leave be granted it, to present to this Court briefs and argument, together with such suggestions as may from time to time appear to be proper, in support of the validity and legality of said act.

Respectfully submitted,

THE AMERICAN LEGION, DEPARTMENT OF NEBRASKA,
By PITZER, CLINE & TYLER,
PITZER, CLINE & TYLER,
ROBERT G. SIMMONS,
ROBERT G. SIMMONS,
118 BROGAN, ELLICK & RAYMOND,
BROGAN, ELLICK & RAYMOND,
FRED W. ASHTON,
FRED W. ASHTON,
SACKETT & BREWSTER,
SACKETT & BREWSTER,
EDWARD P. McDERMOTT,
EDWARD P. McDERMOTT,
HOLMES, CHAMBERS & MANN,
HOLMES, CHAMBERS & MANN,
T. J. McGUIRE,
T. J. McGUIRE,
HASTINGS, RITCHIE, MANTZ & CANADAY,
HASTINGS, RITCHIE, MANTZ & CANADAY,
SPILLMAN & MUFFLY,
SPILLMAN & MUFFLY,
MOTHERSEAD & YORK,
MOTHERSEAD & YORK,
Its Attorneys.

Endorsed: In the Supreme Court of Nebraska. Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other States, and Diederick Siefken, Plaintiffs, Appellees, vs. Samuel R. McKelvie et al., Defendants, Appellants. 22424. Application of The American Legion, Department of Nebraska, for leave to appear as amicus curiæ. Supreme Court of Nebraska. Filed Nov. 28, 1921. H. C. Lindsay, Clerk.

And afterwards, to wit, on the 1st day of December, 1921, there was rendered by said Supreme Court and entered of record upon the journal thereof, a certain order in the words and figures following, to wit:

119 Supreme Court of Nebraska, September Term, A. D. 1921, Dec. 1.

No. 22424.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, and Other States and Diederick Siefken et al., Interveners, Appellees & Cross-Appellants.

v.

SAMUEL R. MCKELVIE et al., Appellants & Cross-Appellees.

Appeal from the District Court of Platte County.

This cause coming on to be heard upon motion of American Legion, Department of Nebraska, for leave to appear as amicus curiæ herein, was submitted to the court; upon due consideration whereof, it is by the court ordered that said motion be, and same hereby is, sustained and leave given said American Legion, Department of Nebraska, to appear as amicus curiæ.

A. M. MORRISSEY,
Chief Justice.

120 And afterwards, to wit, on December 20, 1921, appellants Samuel R. McKelvie et al., as provided by the rules of the Supreme Court of Nebraska, filed in the office of the Clerk of said Supreme Court their printed brief containing their assignments of error; and, afterwards, to wit, on January 17, 1922, the appellees Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other states et al. filed their printed brief of assignments of error in the office of the Clerk of said Supreme Court of Nebraska; and, afterwards, to wit, on February 6, 1922, the appellee John Siedlik filed his brief in the office of the Clerk of said Court containing his assignment of error; and, afterwards, to wit, on March 8, 1922, the said appellees filed their printed amended assignment of errors in the office of the Clerk of said Supreme Court and the following are true and correct copies of such portions of said briefs as are requested in the original præcipes to be made a part of the return to the writ of error herein, to wit:

121 *Appellants' Assignment of Errors in Supreme Court (pp. 11-12 of Appellants' Brief).*

Errors Relied on for Reversal.

Appellants predicate error upon:

I.

The assumption by the District Court of jurisdiction over constitutional questions contrary to Section 2, Article 5, Constitution of Nebraska.

II.

The assumption of jurisdiction over the Governor and Attorney General by the District Court of Platte County, when said defendants were not served within the county and when the action was not brought where the cause of action arose.

III.

The use by the court of equity of its power to enjoin the enforcement of criminal statutes where property rights are not substantially involved.

IV.

The determination that the foreign language statute interferes with religious worship.

V.

The determination by the trial court that the foreign language statute in its real meaning is unconstitutional as interfering with religious liberty.

Appellees' Assignment of Errors in Supreme Court on Cross-Appeal (p. 18, Appellees' Brief).

Errors Relied Upon by Cross-appellants.

I.

The court erred in deciding and holding that sections 2 and 3 of chapter 61 of the Laws of 1921, and each of them, are em-
122 braced within the title of said act.

II.

The court erred in deciding and holding that sections 2, 3, 4 and 5 of said chapter, and each of them, are constitutional.

III.

The court erred in limiting the injunction to interference with the plaintiff in giving religious instruction in a fore-gn language, and sufficient instruction in such language, as to enable it to impart religious instruction therein, and in not extending it to include all subjects of instruction outside school branches.

Appellees' Amended Assignment of Errors in Supreme Court (*pp.* 1-4, *Separate Brief of Appellees' Amended Assignment*).

Come now the appellees and cross-appellants, The Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other states and Diederick Siefken and for an amended assignment of errors on their cross-appeal, assign jointly and severally the following:

I.

The District Court erred in deciding and holding that Sections 2 and 3 of Chapter 61 of the Laws of 1921 of Nebraska, and each of said sections, are embraced within the title to said act.

II.

The District Court erred in deciding and holding that Sections 2, 3, 4 and 5 of Chapter 61 of the Laws of 1921 of Nebraska, and each of said sections are constitutional and not in contravention of Sections 3 and 5 of Article I of the Constitution of Nebraska, or of either of said sections of the Constitution.

III.

The District Court erred in deciding and holding that Sections 2, 3, 4 and 5 of Chapter 61 of the Laws of 1921 of Nebraska
123 and each of them are constitutional and not contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, not operating nor calculated to operate to deprive these cross-appellants or either of them of their liberty or property without due process of law, as an unreasonable restraint upon their liberty, or the liberty of either of them, nor as unjustly discriminating.

IV.

The court erred in limiting the injunction to interference with the plaintiff in giving religious instruction in a foreign language, and sufficient instruction in such language, as to enable it to impart religious instruction therein, and in not extending it to include all subjects of instruction outside school branches.

V.

Sections 2, 3, 4 and 5 and each of them of Chapter 61, Laws 1921, commonly called the Reed-Norval Act, violate Section 1, Article 1 of the State Constitution.

VI.

Said sections, and each of them, violate Section 3, Article 1 of the State Constitution.

VII.

Said sections, and each of them, violate Section 4, Article 1 of the State Constitution.

VIII.

Said sections, and each of them, violate Section 5 of Article 1 of the State Constitution.

IX.

Said sections, and each of them, violate section 19, Article 1 of the State Constitution.

X.

Said sections, and each of them, violate Section 21, Article I of the State Constitution.

124 XI.

Said sections, and each of them, violate Section 15, Article III of the State Constitution.

XII.

Said sections, and each of them, violate Section 4 of the Enabling Act, passed by Congress April 19, 1864.

XIII.

Said sections and each of them violate the Fourteenth Amendment to the Constitution of the United States.

XIV.

Said sections and each of them violate that part of the Fourteenth Amendment to the Constitution of the United States that reads as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor

shall any state deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the law."

SANDALL & WRAY,
ARTHUR F. MULLEN,
ALBERT & WAGNER,
Attorneys for Appellees and Cross-Appellants

Intervenor Siedlik's Assignment of Errors (pp. 2-5 of Seidlik Intervenor's Brief.)

Assignment of Errors.

1. The trial court erred in holding that sections 2, 3, 4 and 5 of the act were valid and constitutional.

2. The trial court erred in holding that the provisions of the act in question did not interfere with freedom of religion.

3. The trial court erred in holding that the Attorney Gen-
125 General did not properly construe the provisions of the act in question.

4. The trial court erred in refusing to enjoin the appellants from proceeding under the provisions of sections 2, 3, 4, and 5 of the act in question.

5. The trial court erred in holding that the provisions of sections 2, 3, 4 and 5 of the act in question did not violate the provisions of the 14th Amendment to the Constitution of the United States.

Reason for Error.

The foregoing assignment of errors is based on the proposition that Chapter 61 of the laws of 1921 is unconstitutional and void. The foregoing law is unconstitutional and void and for the following reasons, to-wit:

1. It violates the following provisions of Sec. 1, Art. 1 of the Constitution:

"All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty and the pursuit of happiness."

2. It violates the following provisions of Sec. 3, Art. 1 of the Constitution:

"No person shall be deprived of life, liberty, or property, without due process of law."

3. It violates the provisions of Sec. 4, Art. 1 of the Constitution:

"All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences.

No person shall be compelled to attend, erect or support any place of worship against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing
126 herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction."

4. It violates the following provisions of Sec. 5 of Art. 1 of the Constitution:

"Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty."

5. It violates the provisions of Sec. 19, Art 1 of the Constitution:

"The right of the people peaceably to assemble to consult for the common good, and to petition the government, or any department thereof, shall never be abridged."

6. It violates the following provisions of Sec. 21, Art. 1 of the Constitution:

"The property of no person shall be taken or damaged for public use without just compensation therefor."

7. It violates the following provisions of Sec. 15 of Article III of the Constitution:

"The legislature shall not pass local or special laws in any of the following cases; that is to say, * * * granting to any corporation, association or individual any special or exclusive privileges, immunities or franchises whatever. In all other cases where a general law can be made applicable, no special law shall be enacted."

8. It violates the following provisions of Sec. 4 of the Enabling Act, passed by Congress on April 19, 1864:

"And provided further, that said constitution shall provide, by an article forever irrevocable, without the consent of the Congress of the United States * * * Second. That perfect toleration
127 of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship."

9. It violates the following provisions of the Fourteenth Amendment to the Constitution of the United States:

"No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty or property without due

process of law, nor deny to any person within its jurisdiction the equal protection of the law."

In addition to the foregoing it is suggested that the act is unconstitutional for the reason that the body of the act is wider than its title. While there is merit in this contention our view is that the subject matter of sections 2, 3, 4, and 5 cannot be made valid or constitutional under any title. The subject matter of these sections violates and contravenes the provisions of the Constitution of the State, the provisions of the Enabling Act, and the provisions of the Constitution of the United States.

And afterwards, to wit, on the 19th day of April, 1922, there was rendered by said Court and entered of record upon the journal thereof a certain Judgment, in the words and figures following, to wit:

128 Supreme Court of Nebraska, January Term, A. D. 1922, April 19.

No. 22424.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, Appellees & Cross-Appellants,

v.

SAMUEL R. MCKELVIE et al., Appellants & Cross-Appellees.

Appeal from the District Court of Platte County.

This cause coming on to be heard upon appeal from the district court of Platte county, was argued by counsel and submitted to the court; upon due consideration whereof, the court finds error apparent in the record of the proceedings and judgment of said district court. It is, therefore, ordered and adjudged that said judgment of the district court be, and same hereby is, reversed and the action dismissed; that appellants pay all costs incurred herein, taxed at $—, and have and recover of and from appellees the costs so expended; for all of which execution is hereby awarded, and that mandate issue accordingly.

Opinion by Flansburg, J.
Morrissey, C. J., dissenting separately.

A. M. MORRISSEY,
Chief Justice.

And on the same day there was filed in the office of the Clerk of said Supreme Court a certain Opinion by said Court, pursuant to which the preceding judgment was entered, which opinion is in the words and figures following, to wit:

129 No. 22424.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, etc.,

v.

MCKELVIE.

Opinion.

Filed April 19, 1922.

1. The statute (Laws 1921, ch. 61), relating to the teaching of foreign languages, is a reasonable exercise of the police power and is not unconstitutional, as being in violation of either the state or federal constitutions.

2. In its operation it does not deprive any person of life, liberty or property without due process of law, nor does it deny the equal protection of the law; nor is it invalid, as a restriction upon the freedom of religious worship, nor as an unwarranted interference with the giving of religious instruction.

3. The title of the act, declaring that all school branches are to be taught in the English language, is sufficiently broad to cover provisions regulating and prohibiting the teaching of foreign languages. Such provisions are germane to the subject-matter expressed in the title and are reasonably calculated to aid in carrying out the expressed object.

130 Heard Before Morrissey, C. J., Rose, Dean, Aldrich, Day, and Flansburg, JJ.

FLANSBURG, *J.*:

This is an injunction proceeding brought to test the constitutionality of the statute (Laws 1921, ch. 61), relating to the teaching of foreign languages, without passing upon the propriety of the form of action pursued, we find that the questions presented are largely controlled by the decision in Meyer v. State, 107 Neb., —, upholding a similar statute enacted in 1919.

The 1921 statute, after declaring that the English language shall be the official language of the state and that the common school branches shall be taught in that language, provides:

"Section 2. No person, individually or as a teacher, shall, in any private, denominational, or parochial or public school, teach any subject to any person in any language other than the English language.

"Section 3. Languages other than the English language may be taught as languages only, after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate

of graduation issued by the county superintendent of the county or the city superintendent of the city in which the child resides. Provided, that the provisions of this act shall not apply to schools held on Sunday or on some other day of the week, which those having the care and custody of the pupils attending same conscientiously observe as the Sabbath, where the object and purpose of such schools is the giving of religious instruction, but shall apply to all
131 other schools and to schools held at all other times. Provided, that nothing in this act shall prohibit any person from teaching his own children in his own home any foreign language."

The law is not directed at the teaching of the German language only, but applies to all foreign languages, the so-called ancient or dead languages, not being, strictly speaking, foreign languages, obviously do not come within the spirit or the purpose of the act.

The objections raised resolve themselves into one question: Is the enactment a proper police regulation, reasonably calculated "to promote the health, peace, morals, education or good order of the people," and therefore a regulation excepted from the scope of the constitutional provisions, both state and federal, which prohibit the taking of life, liberty or property without due process of law, and which guarantee the equal protection of the law, and preserve the right of freedom in religious worship?

The reasons found by the legislature for this enactment, we believe, are set out in our opinions in Nebraska District of Evangelical Lutheran Synod v. McKelvie, 104 Neb. 93, and Meyer v. State, supra. The legislature intended that the English language should become the universal language of the state; that children of foreign parentage should be so reared and educated that English would come to be their natural language and the language which they would continue to use. Children of foreign parentage, first starting to school, are able to talk the language of their parents. That language is at that time the one naturally favored by them. The requirement, that children who have not passed the eighth grade shall in language study apply themselves exclusively to the English language, so that English shall be mastered and become the more favored one, we are not ready to say is a measure more stringent than is warranted, nor that the legislature has acted without reason and in a purely arbitrary manner. The law does not create an absolute prohibi-
132 tion against the learning of a foreign language. It only postpones and regulates that teaching. There is no curb on knowledge. Such children have a sufficient task to master English in what time and opportunity is available to them for language study. When the child becomes sufficiently versed in English, which, in the eyes of the law, is when he has passed the eighth grade, and has received the instruction in English which necessarily goes with that extent of education, when that language has become his language, then he is free to study whatsoever language he pleases. The statute was enacted in a jealous regard to further and assure the universal use of English, and, as a means to that end, to curtail, so far as could reasonably be done, the rearing of children of foreign

parentage in the language of their parents. As pointed out in the Meyer case, in operation the law will be recognized as a restraint almost entirely and alone by the foreign element of our population. It is true, in some instances, that there may be other persons who will desire to have their children instructed in a foreign language before the children have passed the eighth grade, but the reasonableness of the law is to be determined by the general class upon which it operates, and the general object and remedy sought to be attained, and individual rights must yield to the general public benefit.

The pleadings on this case show that both the intervener, as well as other parents of children of the schools, affected by this act, have a knowledge of the English language, as well as a knowledge of the language of their own country; that their knowledge of English, though sufficient for business transactions, is so limited that they are unable to impart religious instruction to their children, and are unable to conduct religious worship in English. This is the very condition the legislature seeks to change. The whole object and purport of the law is to the end that it will bring about a condition where the English language will be the favored one.

It is claimed that the law is discriminative. It applies, however, to all schools generally. It covers all of the schools where
133 it is well known, children now receive their education. It operates equally upon all children who have not had an eighth grade education and a knowledge of English which will be consequent therefrom. Private instruction by a hired tutor, whether within or without the scope of the law, is instruction which is negligible in its extent. In either event, the law operates in that matter without discrimination. The use and resulting knowledge of a foreign language in the home is not restricted, nor is instruction there prohibited. The exception of Sabbath schools from the law has been placed there with the evident purpose of preventing interference with religious exercises. It is not essential to the validity of the law that it should be a complete and absolute prohibition against the teaching of foreign languages. It was not intended to be such. The law is a regulation of such teaching, and not a prohibition. The qualifications made are not without reasonable basis, and can not be said to be purely arbitrary.

As was said in the case of Wenham v. State, 65 Neb. 394, 404: "The members of the legislature come from no particular class. They are elected from every portion of the state, and come from every avocation and from all the walks of life. They have observed the conditions with which they are surrounded, and know from experience what laws are necessary to be enacted for the welfare of the communities in which they reside. They determined that the law in question was necessary for the public good. * * * That question was one exclusively within their power and jurisdiction and their action should not be interfered with by the courts, unless their power has been improperly or oppressively exercised."

In the case of Barbier v. Connolly, 113 U. S. 27, in speaking with regard to the exercise of police power, the court, referring to the Fourteenth Amendment of the Constitution of the United States

said (p. 31): "But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the state, sometimes termed its police
134 power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, * * * Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

It appears to us that the law is a reasonable exercise of the police power and is not unconstitutional, as in violation either of the state or of the federal Constitution. In its operation it does not deprive any person of life, liberty or property without due process of law, nor does it deny the equal protection of the law. It does not interfere with religious liberty nor with the giving of religious instruction.

It is claimed that the portion of the act which is quoted in this opinion is not embraced in the title. The title of the act reads as follows: "And act to declare the English language the official language of this state, and to require all official proceedings, records and publications to be in such language and all school branches to be taught in said language in public, private, denominational and parochial schools; and to prohibit discrimination against the use of the English language by social, religious or commercial organizations; to provide a penalty for a violation thereof; to repeal chapter 249 of the Session Laws of Nebraska for 1919, entitled 'An act relating to the teaching of foreign languages in the State of Nebraska' and to declare an emergency."

The title of the act is admittedly broad enough to cover a
135 provision declaring that the English language cannot be taught by means of a foreign language, but plaintiffs contend that the title is not broad enough to cover a provision preventing the teaching of a foreign language in English. When we consider the object of the statute, the distinction is somewhat refined. It is the employment of a foreign language in school which is manifestly aimed at. A foreign language cannot be taught without, in some degree, employing that language in the teaching of it. The legislature could properly have defined language as a subject contemplated to be within the scope of the phrase "all school branches." We cannot say that the legislature did not so use the phrase. The term "school branches" has no strictly limited meaning. Under the title of the act, no one denies but that it is proper to require that reading, writing and spelling shall be taught in English only. How,

then, could a foreign language be taught, except in a very limited degree, without teaching reading, writing, and spelling in that language? The means of teaching a foreign language are so interrelated with the problem of requiring all school branches to be taught in English, only, that a provision in the statute, regulating the teaching of foreign languages, seems to us to be entirely consistent with the subject as expressed in the title, and a provision properly calculated to aid in carrying out the expressed object sought to be attained.

The judgment of the lower court is therefore reversed and the action dismissed.

Reversed and dismissed.

136 MORRISSEY, *C. J.*, dissenting:

Chapter 61, Laws 1921, in the main, is calculated to prohibit and penalize the teaching, in a school, of languages other than English. The history of the ages dead and gone reveals that every forward step in science and philosophy met with opposition and oftentimes with persecution, but, notwithstanding this opposition, learning spread, the human mind expanded, and knowledge of the arts and sciences reached the multitude. We have been wont to look upon the prescriptions of the past with charity because of the age in which they occurred, but, now in the twentieth century, the majority opinion sustains a statute as a reasonable exercise of the police power that prescribes the teaching of modern languages, in a school, although it sanctions the teaching of such languages if done by a private tutor, or a parent, in the home. If the teaching of such languages is viscious and harmful, it must be so when done by a private tutor, or by a parent, in the home. If not hurtful to the state when taught by a private tutor or by a parent, in the home, how can it be said to be harmful to the state when taught in a school, when such teaching is not permitted to impair the work of the child in the common branches of learning. I cannot regard as a reasonable exercise of the police power a provision which arbitrarily forbids the acquisition of useful learning—learning that is not harmful in itself, learning that the well to do parent may employ a private tutor to impart to his child, or that the cultured parent may personally impart to his child, if not done in a school. The police power has never been held to extend to the prohibition of acts not injurious to society or which cannot reasonably be said to be harmful to the public welfare. It is an arbitrary classification which reason will not support. The pro-

137 vision declaring the English language to be the official language of the state and the provisions requiring the teaching of that language in all schools of the state are proper, and no person complains of them or questions their validity, but those provisions that prohibit the teaching of other languages, in a school, even though such teaching does not interfere with the school course prescribed by proper authority, in my judgment, violate the provisions of both the state and federal constitutions. I, therefore, dissent from the holding announced and adhere to the opinion of this court in Nebraska District of Evangelical Lutheran Synod v. Mc-

Kelvie, 104 Neb. 93, and to the dissenting opinion in Meyer v. State, 107 Neb. —.

138 And afterwards, to wit, on the 17th day of May, 1922, there was filed in the office of the Clerk of said Supreme Court, a certain Motion for Rehearing in the words and figures following, to wit:

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, etc., Appellees,

vs.

SAMUEL R. MCKELVIE et al., Appellants.

Motion for Rehearing.

Come now Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other states, Diederick Siefkin and John Siedlik, appellees, and move the court that a rehearing of this cause be granted for the following reasons:

1. In holding that Chapter 61 of the Laws of 1921 was a reasonable exercise of the police power this court overlooked the provisions of the Constitution of the State of Nebraska and the Constitution of the United States.

2. In holding that Chapter 61 of the Laws of 1921 was a reasonable exercise of the police power this court overlooked the adjudicated cases of this court and also of the Supreme Court of the United States.

3. In holding that the provisions of Chapter 61 of the Laws of 1921 were constitutional this court did not properly interpret the provisions of Section 1 of the 14th Amendment to the Constitution of the United States.

4. In holding that the provisions of Chapter 61 of the Laws of 1921 were constitutional this court did not properly interpret Section 4 of the Enabling Act, passed by the Congress of the United States on April 19, 1864.

5. This court erred in holding that the provisions of Chapter 61 of the Laws of 1921 did not violate the provisions of Section 1 of the 14th Amendment to the Constitution of the United States.

139 6. This court erred in holding that Chapter 61 of the Laws of 1921 did not violate the provisions of Section 4 of the Nebraska Enabling Act passed by Congress on April 19th, 1864.

7. This court erred in holding that Chapter 61 of the Laws of 1921 did not violate the various provisions of the Constitution of the State of Nebraska as alleged in the briefs of appellees.

ALBERT & WAGNER,
SANDALL & WRAY,
ARTHUR F. MULLEN,
Attorneys for Appellees.

Endorsed: 22424. In the Supreme Court of Nebraska. Nebraska District of Evangelical Lutheran Synod of Missouri, etc., Appellees, vs. Samuel R. McKelvie et al., Appellants. Motion for rehearing. Supreme Court of Nebraska. Filed May 17, 1921. H. C. Lindsay, Clerk.

And afterwards, to wit, on the 18th day of May, 1922, there was rendered by said Supreme Court and entered of record upon the journal thereof, a certain Order in the words and figures following, to wit:

Supreme Court of Nebraska, January Term, A. D. 1922, May 18.

No. 22424.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO AND OTHER STATES et al., Appellees & Cross-Appellants,

v.

SAMUEL R. MCKELVIE et al., Appellants & Cross-Appellees.

Appeal from the District Court of Platte County.

This cause coming on to be heard upon motion of appellees for a rehearing herein, was submitted to the court; upon due consideration whereof, the court finds no probable error in the judgment of this court heretofore entered herein. It is, therefore, ordered and adjudged that said motion for rehearing be, and same hereby is, overruled and a rehearing herein denied.

A. M. MORRISSEY,
Chief Justice.

140 And afterwards, to wit, on May 18, 1922, there was filed in the office of the Clerk of the Supreme Court of Nebraska, a certain Petition for a Writ of Error herein, which original petition marked "Exhibit A" is attached hereto and forms a part of the return to the writ of error.

141 EXHIBIT A. H. C. Lindsay, Clerk.

In the Supreme Court of the State of Nebraska.

General Number 22424.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, and Other States, Dietrick Siefken, and John Siedlik, Plaintiffs in Error,

vs.

SAMUEL R. MCKELVIE, CLARENCE A. DAVIS, OTTO F. WALTER, and Their Deputies, Subordinates, and Assistants, Defendants in Error.

Petition for Writ of Error.

To the Honorable Andrew M. Morrissey, Chief Justice of the Supreme Court of the State of Nebraska, and to the Associate Judges of said court:

The Plaintiffs in error, Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other states, Dietrick Siefken, and John Siedlik, show by this petition that on the 19th day of April, 1922, in the said Supreme Court of the State of Nebraska, a judgment was rendered against the plaintiffs in error in a suit wherein the said Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other states and Dietrick Siefken were plaintiffs and appellees, and John Siedlik was an intervenor and appellee, and the said Samuel R. McKelvie, Clarence A. Davis, Otto F. Walter, were defendants and appellants, and thereafter a motion for a rehearing was filed, presented, considered, and on the 18th day of May, A. D. 1922, denied by the court, whereupon said judgment became and is final; that the court rendering the same is the highest court of said State in which a decision could be had in this suit, and thereby a manifest error has occurred, greatly to the damage of the plaintiffs in error.

That, as appears in the record, proceedings and decision of the Supreme Court there was drawn in question in said proceeding the validity of a statute of the State of Nebraska, to-wit, Chapter 61 of the Laws of 1921, on the ground that the provisions of the aforesaid statute were unconstitutional and invalid as being repugnant to the provisions of the fourteenth amendment to the Constitution of the United States, and in contravention thereof; that the pro-

142 visions of said statute were unconstitutional and invalid as being repugnant to the provisions of section 4 of an act passed by the Congress of the United States on April 19, 1864, known as the Enabling Act admitting Nebraska to Statehood, and in contravention thereof, and the decision of said court was in favor of the validity of the aforesaid statutes, all of which fully appears in the records and proceedings of the case, and is specifically set forth in the Assignment of Errors filed herewith.

Wherefore, petitioners in error severally pray that a writ of error be allowed; and that a transcript of the record, proceedings and papers upon which said decree was rendered, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington, under the rules of said court in such cases made and provided, and that the same may be by said honorable court inspected and corrected in accordance with law and justice, and your petitioners in error further pray that the proper order relating to the required security to be required of them may be made.

ALBERT & WAGNER,
SANDALL & WRAY,
ARTHUR F. MULLEN,
Solicitors for the Plaintiffs in Error.

143 [Endorsed:] General Number 22424. In the Supreme Court of the State of Nebraska. Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other States, Dietrick Siefken, and John Siedlik, Plaintiffs in Error, vs. Samuel R. McKelvie, Clarence A. Davis, Otto F. Walter, and their Deputies, Subordinates, and Assistants, Defendants in Error. Petition for Writ of Error. Albert & Wagner, Sandall & Wray, Arthur F. Mullen, Solicitors for Plaintiffs in Error. Supreme Court of Nebraska. Filed May 18, 1922. H. C. Lindsay, Clerk.

144 And on the same day, to wit, May 18, 1922, there was filed in the office of the Clerk of the Supreme Court of Nebraska certain Assignments of Error, which original assignments of error, marked "Exhibit B," is attached hereto and forms a part of the return to the writ of error herein.

145 EXHIBIT B. H. C. Lindsay, Clerk.

In the Supreme Court of the State of Nebraska.

General Number 22424.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, Ohio, and Other States, Dietrick Siefken, and John Siedlik, Plaintiffs in Error,

vs.

SAMUEL R. MCKELVIE, CLARENCE A. DAVIS, OTTO F. WATLER, and Their Deputies, Subordinates, and Assistants, Defendants in Error.

Assignment of Errors.

Come now the plaintiffs in error in the above entitled cause, and aver and show that in the record and proceedings in said cause the Supreme Court of the State of Nebraska erred to the grievous injury and wrong of the plaintiffs in error herein, and to the prejudice, and

against the rights of the plaintiffs in error, in the following particulars, to-wit:

1. The said Supreme Court erred in holding that Sections 2, 3, 4, 5 of the Laws of Nebraska for 1921, and each of them, are constitutional and not contrary to the provisions of Section 1 of the fourteenth amendment to the Constitution of the United States.

2. The said Supreme Court erred in not holding that Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921 were invalid and unconstitutional and in violation of Section 1 of the fourteenth amendment to the Constitution of the United States.

3. The said Supreme Court erred in holding that the provisions of Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921, did not operate to deprive these plaintiffs in error of their liberty without due process of law.

4. The said Supreme Court erred in holding that the provisions of Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921 did not operate to deprive these plaintiffs in error of their property without due process of law.

146 5. That the said Supreme Court erred in holding that Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921, were not an unreasonable restraint upon the liberty of the plaintiffs in error, and an unjust discrimination against said plaintiffs.

6. That the said Supreme Court erred in holding that the provisions of Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921 did not deny to the plaintiffs in error the equal protection of the law.

7. The said Supreme court erred in holding that sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921 were a valid and reasonable exercise of the police power.

8. The said Supreme Court error in holding sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921 did not validate and contravene the provisions of the Nebraska Enabling Act passed by Congress April 19, 1864. The act among other things provides as follows:

"Section 4. * * * "And provided further, That said constitution shall provide, by an article forever irrevocable, without the consent of the Congress of the United States: * * * Second: That perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship."

9. The said Supreme Court erred in holding that Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska, for 1921 did not interfere with the mode of public worship of the plaintiffs in error.

10. The said Supreme court erred in holding that Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921, did not interfere with the rights of conscience of the plaintiffs in error.

Wherefore, for these and other manifest errors appearing in the record, the said Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other States, Dietrich Siefken, and John Siedlik, plaintiffs in error, severally pray that the judgment of the said Supreme Court of Nebraska be reversed and set aside and held for naught, and that judgment be rendered for plaintiffs in error, granting them their rights under the statutes and laws of the
147 United States, and plaintiffs in error also pray judgment for their costs.

ALBERT & WAGNER,
SANDALL & WRAY,
ARTHUR F. MULLEN,
Attorneys for Plaintiffs in Error.

148 [Endorsed:] General Number 22424. In the Supreme Court of the State of Nebraska. Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other States, Dietrick Siefken, and John Siedlik, Plaintiffs in Error, vs. Samuel R. McKelvie, Clarence A. Davis, Otto F. Walter, and their Deputies, Subordinates, and Assistants, Defendants in Error. Assignment of Errors. Albert & Wagner, Sandall & Wray, Arthur F. Mullen, Solicitors for Plaintiffs in Error. Supreme Court of Nebraska. Filed May 18, 1922. H. C. Lindsay, Clerk.

149 And on the same day, to wit, May 18, 1922, Hon. A. M. Morrissey, Chief Justice of the Supreme Court of the State of Nebraska, entered an order allowing a writ of error herein and fixing supersedeas bond at the sum of $2,000, said original allowance of the writ of error, marked "Exhibit C", is attached hereto and forms a part of the return to the writ of error.

150 EXHIBIT C. H. C. Lindsay, Clerk.

In the Supreme Court of the State of Nebraska.

General Number 22424.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES, DIETRICK SIEFKEN, AND JOHN SIEDLIK, Plaintiffs in Error,

vs.

SAMUEL R. MCKELVIE, CLARENCE A. DAVIS, OTTO F. WALTER, and Their Deputies, Subordinates, and Assistants, Defendants in Error.

Allowance of Writ.

Come now the plaintiffs in error, Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other States, Diederich Sief-

ken, and John Siedlik, on this 18th day of May, 1922, and file and present to this court, their petition, praying for the allowance of writ of error intended to be urged by them; and praying further that a duly authenticated transcript of the records, proceedings and papers upon which the judgment herein was rendered, may be sent to the Supreme Court of the United States; and that such other and further proceedings may be had in the premises as may be just and proper; and upon consideration of the said petition, this court desires to give plaintiffs in error an opportunity to test in the Supreme Court of the United States, the questions therein presented, it is ordered by this court that a writ of error be allowed, as prayed, providing however, that the said plaintiffs in error give bond according to law in the sum of two thousand Dollars ($2,000.00), which said bond shall operate as a supersedeas bond.

In testimony whereof witness my hand this 18th day of May, 1922.

A. M. MORRISSEY,
Chief Justice of the Supreme Court of the State of Nebraska.

151 And on the same day, to wit, May 18, 1922, there was filed in the office of the Clerk of said Supreme Court of Nebraska, a certain Supersedeas Bond, which bond was duly approved by the Chief Justice of said Court, and copy of said bond and approval of the said Chief Justice, marked "Exhibit D," is hereto attached and forms a part of the return to the writ of error.

152 EXHIBIT D. H. C. Lindsay, Clerk.

In the Supreme Court of the State of Nebraska.

General Number 22424.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES, Dietrich Siefken, and John Siedlik, Plaintiffs in Error,

vs.

SAMUEL R. MCKELVIE, CLARENCE A. DAVIS, OTTO F. WALTER, and Their Deputies, Subordinates, and Assistants, Defendants in Error.

Bond on Writ of Appeal.

Know all men by these presents: That we, Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other States, Dietrich Siefken, of the County of Platte, and John Siedlik of the County of Douglas, State of Nebraska, as principals, and Otto H. Sunderman and Charles C. Ehlers, of the County of *and* Lancaster, *of the County of* as sureties, are held and firmly bound

unto the above named Samuel R. McKelvie, Clarence A. Davis, Otto F. Walter, in the sum of Two thousand ($2,000.00) Dollars, to be paid to them and for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 18th day of May, in the year of our Lord, one thousand nine hundred and twenty-two.

Whereas, the above named Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other States, Dietrich Siefken, and John Siedlik, plaintiffs in error, seek to prosecute their writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Nebraska.

153 Now, therefore, the condition of this obligation is such that if the above named plaintiffs in error shall prosecute their writ of error to effect and answer all costs and damages that may be adjudged, if they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full force and virtue.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES AND DIETRICH SIEFKEN,
By ALBERT & WAGNER,
SANDALL & WRAY,
ARTHUR F. MULLEN,
Their Solicitors.

JOHN SIEDLIK,
By ARTHUR F. MULLEN,
His Solicitor.

O. H. SUNDERMAN.
CHARLES C. EHLERS.

STATE OF NEBRASKA,
County of Lancaster, ss:

O. H. Sunderman and Charles C. Ehlers, whose names are subscribed as sureties to the above bond, being severally and duly sworn each for himself says, that he is a resident and freeholder of the State of Nebraska and is worth more than the sum in said bond specified as the penalty thereof, over and above all his just debts and liabilities, in property not by law exempt from execution in this State.

O. H. SUNDERMAN.
CHARLES C. EHLERS.

Subscribed and sworn to before me this 18 day of May, A. D., 1922.

[SEAL.]

H. C. LINDSAY,
Clerk Supreme Court Nebraska.

This bond approved this 18 day of May, 1922.

A. M. MORRISSEY,
Chief Justice of the Supreme Court of the State of Nebraska.

Endorsed: 22424. Nebraska District of Evangelical Lutheran Synod of Missouri, etc., v. McKelvie. Supersedeas Bond. Supreme Court of Nebraska. Filed May 18, 1922. H. C. Lindsay, Clerk.

154 And on the same day, to wit, May 18, 1922, the Hon. A. M. Morrissey, Chief Justice of the Supreme Court of Nebraska, entered a further order of allowance of the writ of error herein, which original order, marked "Exhibit E," is attached hereto and forms a part of the return to said writ of error herein.

155 EXHIBIT E. H. C. Lindsay, Clerk.

In the Supreme Court of Nebraska.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, and Other States, Dietrick Siefken, and John Siedlik, Plaintiffs in Error,

vs.

SAMUEL R. MCKELVIE, CLARENCE A. DAVIS, OTTO F. WALTER, and Their Deputies, Subordinates, and Assistants, Defendants in Error.

Order of Allowance of Writ of Error.

On this 18th day of May, 1922, the applications of Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio, and other States, Diederick Siefken, and John Siedlik, plaintiffs in error in this action, for a writ of error, came on to be heard, said plaintiffs in error being represented by counsel and it appearing to the court from the application filed herein, and from the record filed therewith, that the application should be granted, and that a transcript of the record, proceedings and papers, upon which the judgment of the court was rendered, properly certified, should be sent to the Supreme Court of the United States, as prayed, in order that such proceedings may be had as may be just.

Now, therefore, it is ordered that the writ of error be allowed upon bond being furnished by the plaintiffs in error, conditioned according to law, in the sum of $2,000.00, and that said bond operate as a supersedeas; that the said plaintiffs in error having executed the bond in the sum of $2,000.00, as provided by law, and the clerk is hereby directed to stay the mandate of the Supreme Court of the State of Nebraska, until further order by the United States Supreme Court, and that a true copy of the record, assignment of errors, and all proceedings in the case in the Supreme Court of the State of Nebraska shall be transmitted to the Supreme Court of the United States, duly certified, according to law, in order that said court may

inspect the same and take such action thereon as it deems proper according to law.

A. M. MORRISSEY,
Chief Justice of the Supreme Court of Nebraska.

156 And on the same day, to wit, May 18, 1922, there was issued by the Supreme Court of the United States, a certain Writ of Error herein, which original writ of error with the allowance of the Chief Justice of the State of Nebraska endorsed thereon, is attached hereto, marked "Exhibit F," and forms a part of the return to said writ of error.

157 EXHIBIT F. H. C. Lindsay, Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Supreme Court of the State of Nebraska, Greeting:

Because, in the record and the proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Nebraska, before you, at the April sitting of the January term, 1922 thereof, being the highest court of law or equity of said State, in which a decision could be had in the said suit between Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio, and other states, Dietrich Siefken, and John Siedlik, plaintiffs in error, and Samuel R. McKelvie, Clarence A. Davis, Otto F. Walter, and their deputies, subordinates and assistants, defendants in error, wherein was drawn in question the validity of Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921, a statute of said State, on the ground of its being repugnant to the Constitution, and laws of the United States, and the decision was in favor of its validity, and thereby a manifest error hath happened to the great damage of the said Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other states, Dietrich Siefken, and John Siedlik, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, D. C. within thirty (30) days from the date hereof, to the end that the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, this 18th day of May, in
158 the year of our Lord, one thousand nine hundred and twenty-two.

Done in the city of Lincoln and County of Lancaster, State of Nebraska, with the seal of the District Court of the United States for the District of Nebraska.

[Seal United States District Court, District of Nebraska.]

R. C. HOYT,
Clerk of the District Court of the United States for the District of Nebraska,
By J. H. McCLAY,
Deputy.

Allowed by
A. M. MORRISSEY,
Chief Justice of the Supreme Court of the State of Nebraska.

May 18, 1922.

[Endorsed:] 22424. Nebraska District of Evangelical Lutheran Synod of Missouri, etc., v. McKelvie. Writ of Error. Supreme Court of Nebraska. Filed May 18, 1922. H. C. Lindsay, Clerk.

159 And on the same day, to wit, May 18, 1922, there was issued out of the Supreme Court of the State of Nebraska, a certain Citation, which original citation, with acceptance of service thereof endorsed thereon, is attached hereto, marked "Exhibit G," and forms a part of the return to the writ of error herein.

160 EXHIBIT G. H. C. Lindsay, Clerk.

THE UNITED STATES OF AMERICA:

The President of the United States to Samuel R. McKelvie, Clarence A. Davis, Otto F. Walter, and their Deputies, Subordinates, and Assistants, of Nebraska, Greeting:

You and each of you are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty (30) days from the date hereof, pursuant to a writ of error, filed in the office of the Clerk of the Supreme Court of the State of Nebraska, wherein Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other States, Dietrich Siefken, and John Siedlik are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the chief justice of the Supreme Court of the State of Nebraska, this 18th day of May, 1922.

A. M. MORRISSEY,
Chief Justice of the Supreme Court of the State of Nebraska.

Attest:

[Seal Supreme Court of Nebraska.]

H. C. LINDSAY,
Clerk of the Supreme Court of the State of Nebraska.

COUNTY OF LANCASTER,
State of Nebraska, ss:

May 18, 1922.

I, the undersigned attorney of record for the defendants in error of the above entitled cause, hereby acknowledge due service of the above citation, and enter appearance for said defendants in error in the Supreme Court of the United States.

CLARENCE A. DAVIS,
Attorney General,
Atty. for Defendants in Error.

[Endorsed:] 22424. Nebraska District of Evangelical Lutheran Synod of Missouri, etc., v. McKelvie. Citation and proof of service. Supreme Court of Nebraska. Filed May 18, 1922. H. C. Lindsay, Clerk.

161 And on the same day, to wit, May 18, 1922, there was filed on behalf of the Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other States et al., a Præcipe for the record to be prepared by the Clerk of the said Supreme Court as a return to writ of error herein, which said original præcipe, with acceptance of service thereof endorsed thereon, marked "Exhibit H," is attached hereto and forms a part of the return to the writ of error herein.

162 EXHIBIT H. H. C. Lindsay, Clerk.

In the Supreme Court of Nebraska.

General Number 22424.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, and other States, Diederick Siefkin, and John Siedlik, Appellees,

vs.

SAMUEL R. MCKELVIE, CLARENCE A. DAVIS and OTTO F. WALTER, and Their Deputies, Subordinates, and Assistants, Appellants.

Præcipe.

To the Clerk of the Supreme Court of Nebraska:

You are advised that the undersigned intend to take an appeal to the Supreme Court of United States in the above case, and we desire you to prepare a transcript including therein the following:

1. Petition of plaintiffs (trans. 1-9).
2. Order allowing injunction (trans. 9-10).
3. Petition of intervention of Siedlik (trans. 14-19).
4. Answer of McKelvie, Davis and Walter (trans. 29-31).
5. Answer of McKelvie, Davis and Walter to petition of intervention (trans. 32-33).
6. Reply of plaintiffs (trans. 34).
7. Decree of District Court (trans. 35).
8. Appellants' assignment of errors in Supreme Court (11-12 of appellants' brief).
9. Appellees' assignment of errors in Supreme Court on cross appeal (page 18 appellees' brief).
10. Appellees' amended assignment of errors in Supreme Court (pp. 1-4 separate brief of Appellees' amended assignment).
11. Intervenor Seidlick assignment of errors (pp. 2-5 of Seidlick intervenor's brief).
12. Judgment of the Supreme Court.
13. Majority of opinion Supreme Court.
14. *Dissented* opinion Supreme Court.
15. Bill of exceptions.
16. Motion for rehearing.
17. Order on same.
18. Bond given in Supreme Court.

ALBERT & WAGNER,
SANDALL & WRAY,
ARTHUR F. MULLEN,
Attorneys for the Appellees.

163 STATE OF NEBRASKA,
County of Lancaster, ss:

I, the undersigned attorney of record for the defendants in error in the above entitled cause hereby acknowledge receipt of a copy of the above præcipe and acknowledge due service of the above præcipe on this 18th day of May, 1922.

CLARENCE A. DAVIS,
Attorney for the Defendants in Error.

[Endorsed:] 22424. Nebraska District of Evangelical Lutheran Synod of Missouri, etc., v. McKelvie. Præcipe. Supreme Court of Nebraska. Filed May 18, 1922. H. C. Lindsay, Clerk.

164 And afterwards, to wit, on May 19, 1922, there was filed in the office of the Clerk of the Supreme Court of Nebraska by Clarence A. Davis, attorney general, in behalf of Samuel R. McKelvie et al., a Præcipe for additional matter to be incorporated into the return to said writ of error, which said original additional Præcipe, marked "Exhibit I," is attached hereto and forms a part of the return to the writ of error herein.

165 EXHIBIT J. H. C. Lindsay, Clerk.

In the Supreme Court of Nebraska.

Gen. No. 22424.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES, Diederick Siefkin, and John Siedlik, Appellees,

VS.

SAMUEL R. MCKELVIE, CLARENCE A. DAVIS and OTTO F. WALTER, and Their Deputies, Subordinates, and Assistants, Appellants.

Appellants' Præcipe.

To the Clerk of the Supreme Court of Nebraska:

In addition to the portions of the record desired by the Appellees to be inserted in the transcript set forth in Appellees' præcipe filed May 18, 1922, the Appellants request the inclusion of the following portions of the record in said transcript:

(*a*) Application of American Legion, Department of Nebraska for leave to appear as amicus curiæ.

(*b*) Journal entry of the Supreme Court granting leave to the American Legion to appear as amicus curiæ.

(*c*) Demurrer of defendant, Otto F. Walter, dated June 22, 1921. (Page 24 of Transcript.)

(*d*) Order of the District Court, dated July 21, 1921, overruling the demurrer of the defendant, Otto F. Walter. (Page 28 of Transcript.)

CLARENCE A. DAVIS,
Attorney General,
Attorney for Appellants.

May 19, 1922.

165½ [Endorsed:] 22424. Nebraska District of Evangelical Lutheran Synod of Missouri, etc., v. McKelvie. Præcipe of Atty. Genl. Supreme Court of Nebraska. Filed May 19, 1922. H. C. Lindsay, Clerk.

166 *Certificate of Lodgment.*

STATE OF NEBRASKA, *ss:*

Supreme Court.

I, H. C. Lindsay, Clerk of said Court, do hereby certify that there was lodged with me as such Clerk on May 18, 1922, in the case of Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other states, Diederick Siefkin and John Siedlik v. Samuel R. McKelvie, Clarence A. Davis and Otto F. Walter and their deputies, subordinates and assistants, No. 22424—

1. The original bond of which a copy is herein set forth.

2. Four copies of the writ of error as herein set forth—one for each of the defendants and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Lincoln, Nebraska, this June 7, 1922.

[Seal of the Supreme Court of Nebraska.]

H. C. LINDSAY,
Clerk of Supreme Court of Nebraska.

167 *Authentication of Record.*

STATE OF NEBRASKA, *ss:*

Supreme Court.

I, H. C. Lindsay, Clerk of said Court and custodian of the files and records thereof, do hereby certify that the foregoing pages numbered from 1 to 139, inclusive, are a true, full and complete transcript of the record and proceedings mentioned and described in the præcipes filed in my office requesting this record in the case of

Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other states, Diederick Siefkin and John Siedlik v. Samuel R. McKelvie, Clarence A. Davis and Otto F. Walter and their deputies, subordinates and assistants, No. 22424, the same being an appeal from the district court of Platte county, Nebraska, and also of the opinion of the court rendered therein as the same now appear on file and of record in my office.

In testimony whereof, I have hereunto set my hand and officially affixed the seal of said court at my office in Lincoln, Nebraska, this June 7, 1922.

[Seal of the Supreme Court of Nebraska.]

H. C. LINDSAY,
Clerk Supreme Court of Nebraska.

168 *Return to Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

Supreme Court of Nebraska.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified copy of the following portions of the transcript from the district court filed in my office in the case of Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other states, Diederick Siefkin and John Siedlik v. Samuel R. McKelvie, Clarence A. Davis and Otto F. Walter and their deputies, subordinates and assistants, No. 22424, to wit:

1. Petition of plaintiffs. 2. Order allowing injunction. 3. Petition of Intervention of Siedlik. 4. Demurrer of defendant Walter. 5. Order of July 21, 1921, overruling demurrer of Walter. 6. Answer of McKelvie, Davis and Walter. 7. Answer of McKelvie, Davis and Walter to petition of intervention. 8. Reply of plaintiffs. 9. Decree of district court.

I also herewith transmit to the Supreme Court of the United States a duly certified copy of the bill of exceptions filed in the Supreme Court of Nebraska, and the following portions of the record and proceedings in said case in the Supreme Court of Nebraska, to wit: 1. Application of American Legion for leave to appear as amicus curiæ. 2. Journal entry allowing American Legion to appear as amicus curiæ. 3. Appellants' assignment of errors in Supreme Court. 4. Appellees' assignment of errors in Supreme Court on cross-appeal. 5. Appellees' amended assignment of errors in Supreme Court. 6. Intervenor Siedlik's assignment of errors. 7. Judgment of Supreme Court. 8. Opinion of Supreme Court, including dissenting opinion of Morrissey, C. J. 9. Motion for rehearing. 10. Order overruling motion for rehearing.

I also transmit the original petition for a writ of error herein;

original assignment of errors; allowance of writ; copy of supersedeas bond; allowance of writ; original writ of error; original citation; original præcipe for this record; præcipe of attorney general for additional record, the above and foregoing items comprising
169 all matters and things requested in said præcipes to be made a part of this return to writ of error herein.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Supreme Court of Nebraska, in the City of Lincoln, this 7th day of June, 1922.

[Seal of the Supreme Court of Nebraska.]

H. C. LINDSAY,
Clerk Supreme Court of Nebraska.

Fees:

Charge for this record...	$37.00
Clerk filings, etc.....	3.05
	40.05

Paid by Arthur F. Mullen.
H. C. LINDSAY,
Clerk.

Endorsed on cover: File No. 28,990. Nebraska Supreme Court. Term No. 440. Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio, and other States et al., plaintiff in error, vs. Samuel R. McKelvie, Clarence A. Davis, Otto F. Walter, and their deputies, subordinates and assistants. Filed June 22, 1922. File No. 28,990.

IN THE

United States Supreme Court

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES, ET AL.,
Plaintiffs in Error,

vs.

SAMUEL R. McKELVIE, CLARENCE A. DAVIS, OTTO F. WALTER AND THEIR DEPUTIES, SUBORDINATES, AND ASSISTANTS,
Defendants in Error.

No. 440

BRIEF IN BEHALF OF PLAINTIFFS IN ERROR.

I. L. Albert,
Arthur P. Mullen,
Attorneys for Plaintiffs in Error.

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NATURE OF THE CASE.

The Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio, and other states and Dietrich Siefken, as plaintiffs, and John Siedlik, as an intervenor, the plaintiffs in error herein, began this proceeding in the District Court of Platte County, Nebraska, to enjoin Samuel R. McKelvie, Governor of Nebraska, Clarence A. Davis, attorney general of Nebraska, and Otto F. Walter, county attorney of Platte County, Nebraska, defendants in error herein, from en-

forcing the provisions of sections 2, 3, 4 and 5 of an act passed in 1921, which act is known as Chapter 61 of the Laws of Nebraska for 1921 and omitting immaterial matters, is as follows (Transcript, p. 5):

> Section 1. The English language is hereby declared to be the official language of this state, and all official proceedings, records and publications shall be in such language, and the common school branches shall be taught in said language in public, private, denominational and parochial schools.
>
> Section 2. No person, individually or as a teacher, shall, in any private, denominational, or parochial or public school, teach any subject to any person in any language other than the English language.
>
> Section 3. Languages other than the English language may be taught as languages only, after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county or the city superintendent of the city in which the child resides. Provided, that the provisions of this act shall not apply to schools held on Sunday or on some other day of the week which those having the care and custody of the pupils attending same conscientiously observe as the Sabbath, where the object and purpose of such schools is the giving of religious instruction, but shall apply to all other schools and to schools held at all other times. Provided that nothing in this act shall prohibit any person from teaching his own children in his own home any foreign language.
>
> Section 4. It shall be unlawful for any organization whether social, religious or commercial, to prohibit, forbid or discriminate against the use of the English language in any meeting, school or proceeding, and for any officer, director, member or person in authority in any organization to pass, promulgate, connive at, pub-

lish, enforce or attempt to enforce any such prohibition or discrimination.

Section 5. Any public official, teacher, instructor, or other person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof be fined in any sum not exceeding one hundred ($100.00) Dollars or less than twenty-five ($25.00) Dollars, or be confined in the county jail for a period not exceeding thirty days for each offense.

The trial judge granted an injunction restraining the defendants in error from enforcing the act insofar as it related to the giving of religious instruction. (Trans., p. 19). The defendants in error appealed from this decision. The Supreme Court of Nebraska reversed the decision of the trial court and denied the injunction. (Trans., p. 81.) Thereafter, a motion for a rehearing was filed in said Supreme Court (Trans., p. 87), which motion on the 18th of May, 1922, was overruled (Trans., p. 88). From this order and judgment the plaintiffs in error have carried this cause to this court for review by writ of error (Trans., pp. 89-98 incl.).

CONTENTION AND PLEADINGS.

Plaintiffs in error contend that sections 2, 3, 4 and 5 of the act in question violates the provisions of the 14th amendment to the Constitution of the United States, and also the provisions of the Enabling Act admittng Nebraska into the Union. The Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and other states and Dietrich Siefken began this proceeding for the purpose of securing an injunction. A copy of their petition appears Transcript, pp. 2-8 inclusive. The intervenor, John Siedlik, joined with the other plaintiffs in error in their application for relief. His petition of intervention appears Transcript pp. 9-12 inclusive. Answers were filed by the defendants in error (Trans., pp. 14-18 incl.). A copy of the evidence introduced at the trial appears Transcript, pp. 22-70 inclusive.

The issues presented for decision are solely matters of law. There is no issue of fact to be passed on by this court.

FACTS PROVED.

The allegations of the petition of the Nebraska Evangelical Lutheran Synod of Missouri, Ohio, and other states have been proven without conflict. The testimony of intervenor Siedlik and the witness Kalamaja (Trans., pp. 46 to 58 inclusive), establish without conflict all the allegations made in intervenor's petition, which is in substance as follows:

> "That the intervenor is a naturalized citizen of the United States, was born in Poland about thirty-nine years ago, and at the present time and for more than five years last past has been a resident taxpayer of and elector in the State of Nebraska.

That intervenor is now and for many years last past has been a member of St. Francis Parish in South Omaha, Nebraska, and is a communicant of the Roman Catholic church.

That intervenor has a family, consisting of his wife and five children; that intervenor's wife was born in Poland; that at the time intervenor came to this country he could not speak the English language; that the wife of this intervenor cannot speak the English language at the present time; that intervenor has acquired a working knowledge of the English language insofar as it relates to business and every day affairs; that in religious matters he has not acquired sufficient knowledge of the English language to either give or receive instructions in religion and morality in said language; that the language used in his home is Polish; that all of the children in said home, in communicating with the intervenor and his wife, use the Polish language.

That it is the religious duty of this intervenor and his wife to instruct their children in religion and morals and that such instruction has been given and is now being given by this intervenor and his wife in said Polish language, and that it is impossible for this intervenor or his wife to give religious instruction to their children in any other language.

That intervenor, as a part of the plan of educating his children, has contributed over $500.00 to the erection and support of a parochial school in the aforesaid parish and is now and for more than five years last past has contributed fifty cents a month for each child attending said school for the support and maintenance of said school; that his children have attended and are now attending said school; that all of the expense of erecting, maintaining and supporting said school is borne by this intervenor and other persons of Polish birth or descent; that no part of the public revenues is used to support said school; that one of the reasons for maintaining said parochial school is to educate the children

there in matters of faith and morals and, in particular, in the doctrines and discipline of the Roman Catholic Church; that the course of study in said school, insofar as the secular branches are concerned, is substantially the equivalent of the public schools in the same community; that the purpose and object of said school is to educate and train the children to understand, speak and use the English language and to educate them so that they will be useful and competent citizens of the United States; that said school has a regular course of study and employs the English language in the instruction of the children, but in addition thereto, in the lower grades, prior to the passage of the Act in question, taught the Polish language and gave religious instruction to the children in Polish; that the Polish language was used for the purpose of teaching the children English and to instruct said children in matters of religion and morality until said children had a working knowledge of the English language; that after said children had acquired a working knowledge of the English language no instruction was given either in the Polish language or in any subject in said language; that all the instruction given to the children in said school, after children reach seventh grade all instruction is in English language, and no Polish is used above the sixth grade; that the children who complete the regular work in said school have been admitted without examination to the schools of the city of Omaha and other schools of equal grade; that said school was and is one of the accredited schools of learning in the city of Omaha.

That it is the intention and purpose of intervenor to have his children educated in the English language and also to have them acquire a working knowledge of th Polish language, so that they can receive information and be instructed in faith and morals in both the Polish language and the English language.

That it is impossible for the teachers in said school to give religious instruction properly to the children in

the lower grades in the English language if said children are denied the right to receive a rudimentary education in Polish, and it is impossible for this intervenor and his wife to instruct his children properly in faith and morals and thereby discharge an obligation that is imposed upon them as a matter of conscience; that it is impossible for said children to communicate properly with their teachers and with their mother without using the Polish language.

Intervenor alleges that when he contributed to the expense of creating said school and when he contributes to the support and faintenance of the same, it was and is with the intention and understanding that the rudiments of the Polish language be taught to his children in said school and that religious instruction be given to the children therein, who do not understand English, in the Polish language, until said children can acquire a sufficient working knowledge of the English language to understandingly take instruction in said language; that he has children attending said school below the eighth grade that do not have sufficient knowledge of the English language to intelligently receive instruction in the English language; that it is impossible to instruct said children without using the Polish language."

The following excerpt from the testimony of Siedlik illustrates the difficulty and demonstrates the impossibility of giving proper instruction without using the language of the home (Trans., p. 49):

"Q. Do they speak Polish?

A. Yes.

Q. Do you want your children to study them?

A. Yes, sure.

O. And in English?

A. Yes.

Q. Do you want your children to be instructed in religion in your school?

A. Yes, ma'am.

Q. Do you want your children instructed in that in whatever language they understand it, whether English or Polish, in the language that they can understand religion?

A. (No answer).

Q. Do you want the children to understand their instruction?

A. I don't understand.

Q. I will withdraw the question.

Q. Have they been teaching Polish in your school since this law passed?

A. Yes, Polish.

Q. Have they been teaching Polish since last spring? Do you understand my question? Have the sisters been using any Polish in that school since the law was passed?

A. Yes, sir.

Q. I don't think you understand me. Have these sisters been using the Polish language, have they talked to the children in Polish since they passed this law?

A. No; they don't talk Polish.

Q. What effect has that had on your children in the lower grades?

A. This time in English they couldn't do nothing.

Q. Why couldn't they do anything?

A. They understand not the English language."

And again from the testimony of Kalamaja (Trans., p. 55):

"Q. Do you know what effect the enforcement of the law had with reference to the pupils in this school, stopping teaching Polish, do you know what effect it had?

A. I know, yes.

Q. What effect did it have?

A. It had the effect that some people were ready to withdraw their children from that school. Moreover, the child of this man that testified here has lost one year's school, almost has learned nothing; simply lost time because no Polish was taught, and the children could not learn, could not profit from the English instruction given.

Q. Is it true in the primary grade?

A. That is true generally."

ERROR ASSIGNMENTS BELOW.

The Assignment of Errors, which were passed on by the Supreme Court of Nebraska, appear in the Transcript, pp. 77-80. The specific Assignments relating to the Federal question are as follows:

III.

"The District Court erred in deciding and holding that Sections 2, 3, 4 and 5 of Chapter 61 of the Laws of 1921 of Nebraska and each of them are constitutional and not contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, not operating nor calculated to operate to deprive these cross-appellants or either of them of their liberty or property without due process of law, as an unreasonable restraint upon their liberty, or the liberty of either of them, nor as unjustly discriminating." (Transcript, p. 77.)

XII.

"Said sections, and each of them, violate Section 4 of the Enabling Act, passed by Congress, April 19, 1864." (Transcrip, p. 78.)

XIII.

"Said sections, and each of them, violate the Fourteenth Amendment to the Constitution of the United States." (Transcript, p. 78.)

XIV.

"Said sections, and each of them, violate that part of the Fourteenth Amendment to the Constitution of the United States that reads as follows:

'No state shall make or enforce any law which shall abridge the privileges or immunities of the

citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the law.' (Transcript, p. 78.)

"5. The trial court erred in holding that the provisions of sections 2, 3, 4 and 5 of the act in question did not violate the provisions of the 14th Amendment to the Constitution of the United States." (Transcript, p. 79.)

"8. It violates the following provisions of Sec. 4 of the Enabling Act, passed by Congress on April 19, 1864:

'And provided further, that said constitution shall provide, by an article forever irrevocable, without the consent of the Congress of the United States * * * Second. That perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship.'" (Transcript, p. 80.)

"9. It violates the following provisions of the Fourteenth Amendment to the Constitution of the United States:

'No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law.'" (Transcript, p. 80.)

ASSIGNMENT OF ERRORS.

The Assignment of Errors in this court appear in Transcript, pp. 91-92, and is as follows:

1. The said Supreme Court erred in holding that Sections 2, 3, 4, 5 of Chapter 61, of the Laws of Nebraska for 1921, and each of them, are constitutional and not contrary to the provisions of Section 1 of the fourteenth amendment to the Constitution of the United States.

2. The said Supreme Court erred in not holding that Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921 were invalid and unconstitutional and in violation of Section 1 of the fourteenth amendment to the constitution of the United States.

3. The said Supreme Court erred in holding that the provisions of Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921 did not operate to deprive these plaintiffs in error of their property without due process of law.

4. The said Supreme Court erred in holding that the provisions of Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921 did not operate to deprive these plaintiffs in error of their property without due process of law.

5. That the said Supreme Court erred in holding that Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921, were not an unreasonable restraint upon the liberty of the plaintiffs in error, and an unjust discrimnation against said plaintiffs.

6. That the said Supreme Court erred in holding that the provisions of Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921 did not deny to the plaintiffs in error the equal protection of the law.

7. The said Supreme Court erred in holding that

Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921 were a valid and reasonable exercise of the police power.

8. The said Supreme Court erred in holding sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921 did not validate and contravene the provisions of the Nebraska Enabling Act passed by Congress April 19, 1864. The act among other things provides as follows:

"Section 4. * * * "And provided further, That said constitution shall provide, by an article forever irrevocable, without the consent of the Congress of the United States: * * * Second: That perfect toleration of religous sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship."

9. The said Supreme Court erred in holding that Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921 did not interfere with the mode of public worship of the plaintiffs in error.

10. The said Supreme Court erred in holding that Sections 2, 3, 4, 5 of Chapter 61 of the Laws of Nebraska for 1921 did not interfere with the rights of conscience of plaintiffs in error.

INTENT AND PURPOSE OF ACT.

The Act in question seeks:

1. To prohibit the giving of instruction in any subject, in any foreign language, at any time, by any person.

2. To prohibit the study of any subject in any language other than English by any person in any school.

3. To prohibit all children below the ninth grade from studying or using a foreign language in any school.

4. To prohibit parents from hiring tutors to teach their children foreign languages either privately or in schools.

5. To prohibit the study of foreign languages except in the home of the parents and confines the instruction in foreign languages exclusively to the parents of the children taught.

6. To prohibit religious instruction through the medium of a foreign language in private, denominational and parochial schools.

PRINCIPLES AND AUTHORITIES.

I.

The Act in question deprives persons of their liberty and property without due process of law.

Gouled vs. United States, 255 U. S. 289.

Truax vs. Raich, 239 U. S. 33; 60 L. ed. 131.

Adams vs. Tanner, 244 U. S. 590, 61 L. ed. 1336.

Algeyer vs. Louisiana, 165 U. S. 568, 41 L. ed. 832.

Brazee vs. Michigan, 241 U. S. 340, 60 L. ed. 1034.

Booth vs. Illinois, 184 U. S. 425, 46 L. ed. 623.

McLean vs. Arkansas, 211 U. S. 539, 53 L. ed. 315.

Ex Parte vs. Arata, 198 P. 814.

Ex Parte vs. Kotta, 200 P. 957.

Hostetter vs. Harris, 197 P. 697.

People vs. Gillson, 109 N. Y. 389.

State vs. Reel Splint, 36 W. Va. 856.

Richie vs. People, 155 Ill. 98.

Bracewall vs. People, 147 Ill. 66.

State vs. Julow, 129 Mo. 172.

Corley's Principles of Cons. Law, 3rd ed. 246.

Columbia Trust Co. vs. Lincoln Institute, 138 Ky. 804, 129 S. W. 113.

Rorabach vs. Motion Picture, 140 Minn. 481.

II.

The Act in question is an unreasonable and arbitrary classification.

Truax vs. Corrigan, 66 L. ed. 132.

Yick Wo vs. Hopkins, 118 U. S. 356.

Truax vs. Raich, 239 U. S. 33, 60 L. ed. 131.

Gulf vs. Ellis, 165 U. S. 155, 41 L. ed. 668.

McGoun vs. Illinois, 170 U. S. 283, 42 L. ed. 1037.

Southern vs. Greene, 216 U. S. 400, 54 L. ed. 536.

Barbier vs. Connolly, 113 U. S. 29, 28 L. ed. 923.

Hayes vs. Missouri, 120 U. S. 68, 30 L. ed. 578.

Missouri vs. Lewis, 101 U. S. 22, 25 L. ed. 989.

Lockner vs. New York, 198 U. S. 64, 49 L. ed. 944.

Dobbins vs. Los Angeles, 195 U. S. 240, 49 L. ed. 177.

German Alliance vs. Hall, 219 U. S. 319, 55 L. ed. 236.

Cotting vs. Goddard, 183 U. S. 107, 46 L. ed. 108.

Hudson vs. McCarter, 209 U. S. 349, 52 L. ed. 828.

Noble State Bank vs. Haskell, 218 U. S. 104, 55 L. ed. 112.

Yee Gee vs. San Francisco, 235 Fed. 757.

Davidson vs. Wadsworth, 178 Fed. 776.

Raich vs. Truax, 219 Fed. 276.

In re Marshall, 102 Fed. 326.

Jew Ho vs. Williamson, 103 Fed. 23.

In re Opinion of Justices, 207 Mass. 601, 94 N. E. 558, 34 L. R. A. (N. S.) 604.

City of La Junta vs. Heath, 37 Colo. 375, 88 Pac. 460.

III.

The Act in question interferes with religous liberty, and therefore abridges the privileges and immunities of citizens of the United States.

Cooley's Principles of Constitutional Law, 3rd Ed. 224.

Cooley's Constitutional Limitations, 7th Ed. 665.

Section 4 of the Enabling Act of Nebraska, passed April 19, 1864.

Section 1 of the 14th Amendment to the Constitution of the United States.

United States vs. Cruikshank, 92 U. S. 542, 23 L. ed. 588.

Paul vs. Virginia, 8 Wall. 168, 19 L. ed. 357.

Ward vs. Maryland, 12 Wall. 418, 20 L. ed. 449.

In re Slaughter Houses Cases, 16 Wall. 36, 21 L. ed. 394.

Arver vs. United States, 245 U. S. 366, 62 L. ed. 349.

United States vs. Wheeler, 254 U. S. 281, 65 L. ed. 270.

Corvell vs. Coryelle, 4 Wash. C. C. 381.

United States vs. Harris, 106 U. S. 629, 27 L. ed. 290.

Hodges vs. United States, 203 U. S. 1, 51 L. ed. 65.

Crandall vs. Nevada, 6 Wall. 35.

Logan vs. United States, 144 U. S. 293.

IV.

The legislature cannot place unusual and unnecessary restrictions on private business, or impose unusual and unnecessary restrictions upon lawful occupations.

Lawton vs. Steele, 152 U. S. 137, 38 L. ed. 388.

Smith vs. Texas, 233 U. S. 630, 58 L. ed. 1339.

Adams vs. Tanner, 244 U. S. 590, 16 L. ed. 1336.

Lockner vs. New York, 198 U. S. 45, 49 L. ed. 937.

Coppage vs. Kansas, 236 U. S. 1, 59 L. ed. 441.

Allgeyer vs. Louisiana, 165 U. S. 578, 41 L. ed. 832.

Truax vs. Raich, 239 U. S. 33, 60 L. ed. 131.

Booth vs. Illinois, 184 U. S. 425, 47 L. ed. 623.

McLean vs. Arkansas, 211 U. S. 539, 53 L. ed. 215.

Sparm vs. City of Dallas, 225 S. W. 513, 19 A. L. R. 1387.

People vs. Gillson, 109 N. Y. 389.

State vs. Goodwill, 33 W. Va. 179.

Ex Parte Keeler, 45 S. C. 337.

In re Jacobs, 98 N. Y. 98.

Ex Parte Whitwell, 98 Cal. 73.

State vs. Julow, 129 Mo. 164.

V.

The legislature does not have power to prohibit competent persons from engaging in a useful and lawful business and to make contracts relating to said business.

Smith vs. Texas, 233 U. S. 630, 58 L. ed. 1120.

Adams vs. Tanner, 244 U. S. 590, 61 L. ed. 1336.

Brazee vs. Michigan, 241 U. S. 340, 60 L. ed. 1034.

Wiseman vs. Tanner, 221 Fed. 713.

Peterson vs. Widule, 157 Wis. 671, 147 N. W. 974.

Lochner vs. New York, 198 U. S. 45, 49 L. ed. 937.

Adair vs. United States, 208 U. S. 161, 52 L. ed. 436.

Coppage vs. Kansas, 236 U. S. 1, 59 L. ed. 441.

Allgeyer vs. Louisiana, 165 U. S. 578, 41 L. ed. 832.

Truax vs. Raich, 239 U. S. 33, 60 L. ed. 131.

Booth vs. Illinois, 184 U. S. 425, 47 L. ed. 623.

McLean vs. Arkansas, 211 U. S. 539, 53 L. ed. 215.

Lawton vs. Steele, 152 U. S. 133.

VI.

Parents have control over the education of their children superior to control of state.

State vs. Ferguson, 95 Neb. 63, 144 N. W. 1039.

State vs. School District, 31 Neb. 552, 48 N. W. 393.

Nebraska District vs. McKelvie, 104 Neb. 93, 175 N. W. 531.

Meyer vs. State, 187 N. W. 101 (dissenting opinion).

Nebraska District vs. McKelvie, 187 N. W. 927 (dissenting opinion).

LIBERTY OF THE PERSON.

The Act in question violates the provisions of the 14th Amendment with reference to the liberty of the person. Liberty does not mean merely the right to be out of jail; it means freedom of religion; freedom to speak, write, study, contract; freedom of intercouse with the family; freedom to pay the expense of maintaining private educational institutions; freedom of control over the family even as against the State.

Of what use is the freedom of speech if the State, under the guise of the police power, can prevent liberty of thought? Of what use is the right to be out of jail if the State can place shackles on the minds of the youth and arbitrarily prevent them from studying a useful subject. The following citations illustrate some of the definitions of liberty:

> "The comprehensive word is 'liberty'; and by this is meant, not merely freedom to move about unrestrained, but such liberty of conduct, choice and action as the law gives and protects." Cooley's Principles of Cons. Law, 3rd Ed. 246.

> "The word 'liberty', as here used, does not mean simple exemption from bodily imprisonment, but liberty and freedom to engage in lawful business, to make lawful contracts therein, to the end of earning a livelihood for self and family, and of acquiring and enjoying property, and of obtaining happiness. The right to contract and be contracted which is indispensable to these indispensable objects. Elsewhere this great right is recognized by the Constitutions by the provision that contracts made in its exercise shall not be impaired. It is a privilege essential to earn bread and secure happiness. Vain would be the pursuit of happiness if

the right of contract necessary to secure the bread of life and raiment and home be taken away. Scarcely any of the great cardinal rights are more universally recognized and vindicated under our system; indeed, under all civilized governments, than this right of contract. A man must have the right to exercise his skill and talents and dispose of and use his labor and property in lawful pursuits as to him shall seem proper. The property right may be violated by prohibiting its full use to the owner as effectually as by taking it from him, his ownership thus being damaged." State vs. Peel Splint Coal Co., 36 W. Va. 856.

"The term 'liberty', as used in the Constitution, is not dwarfed into mere freedom from physical restraint of the person or citizen, as by incarceration; but it is deemed to embrace the right of a man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. Liberty, in its broad sense, as understood in this country, means the right, not only of freedom from servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and to work where he will, to earn his livelihood in any lawful calling and to pursue any lawful trade or avocation. . . . . The enjoyment or deprivation of these rights and privileges constitutes the essential distinction between freedom and slavery; between liberty and oppression." People vs. Gillson, 109 N. Y. 389. See also: Ritchie vs. People, 155 Ill. 98; Bracewell vs. People, 147 Ill. 66; State vs. Julow, 129 Mo. 172.

When the 14th Amendment was under consideration in the United States Senate, Senator Charles Sumner gave expression to the following as his understanding of its application:

"These are no vain words. Within the sphere of

their influence no person can be created, no person can be born with civil or political privileges not equally enjoyed by all his fellow citizens; nor can any institution be established recognizing distinction of birth. Here is the great charter of every human being drawing vital breath upon this soil, whatever may be his condition and whoever may be his parents. He may be poor, weak, humble or black; he may be of Caucasian, Jewish, Indian or Ethiopian race; he may be of French, German, English or Irish extraction; but before the Constitution all these distinctions disappear. He is not poor, weak, humble or black; nor is he Caucasian, Jew, Indian, or Ethiopian; nor is he French, German, English or Irish. He is a Man, the equal of all his fellow men. He is one of the children of the State, which, like an impartial parent, regards all its offsprings with an equal care. To some it may justly allot higher duties according to higher capacities; but it welcomes all to its equal hospitable board. The State, imitating the divine justice, is no respecter of persons."

In the case of Allgeyer vs. Louisiana, 165 U. S. 578, 589, Justice Peckham, in discussing the application of the 14th Amendment, said:

"The liberty mentioned in that Amendment means not only the right of the citizen to be free from mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

In the recent case of Gouled vs. United States, 255 U. S.

289, 303, Justice Clark, in discussing the constitutional guaranties of personal liberty, said:

> "It would not be possible to add to the emphasis with which the framers of our Constitution and this court in Boyd vs. United States, 116 U. S. 616, in Weeks vs. United States, 232 U. S. 383, and Silverthorne Lumber Co. vs. United States, 251 U. S. 385, have declared the importance to political liberty and to the welfare of our country of the due observance of the rights guaranteed under the Constitution by these two Amendments (Fourth and Fifth). The effect of the decisions cited is: that such rights are declared to be indispensable to the 'full enjoyment of personal security, personal liberty and private property'; they are to be regarded as of the very essence of constitutional liberty; and that the guaranty of them is as imperative as are the guaranties of the other fundamental rights of the individual citizen—the right to trial by jury, to the writ of *habeas corpus* and to due process of law. It has been repeatedly decided that these Amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of courts or by well intentioned but mistakenly over-zealous officers."

The Constitution of Nebraska provides for a public school system which shall be free and in which no sectarian instruction shall be given. The State is well within its rights in providing for a system of public education, but the State has neither the power nor the right to create a State monopoly in the matter of education. The right to teach is only another form of the right to express one's ideas. The right to study any subject is a personal right which is protected by the Constitution of the State. If the State has the right to supply a school master, why not

a nurse? If the State has an absolute right to prescribe a mental regime, why not a physical? Why not enact a national bill of fare based on the most approved medical principles? Why not legislate on the color, habitation and corporal exercise of its youthful subjects? The act in question is based on the discarded philosophy of Plato. It is in line with the code of the Spartans, that deprived the parents of any control over the education of their children and vested it exclusively in the State.

This subject of State monopoly in education is not a new one—it is as old as history. It has been the subject of much discussion. Philosophers and statesmen have discussed it for ages. The concensus of civilized thought is in favor of a general supervision by the State, but lodging in the parents the power to control and direct the education of their children. Among those who have expressed opinions on this subject are two of the greatest intellects of the English speaking people.

Herbert Spencer gave his views in the following words:

> "If the mental wants of the rising generation ought to be satisfied by the State, why not their physical ones? The reason which is held to establish the right to intellectual food, will equally well establish the right to material food; nay, it will do more, will prove that children should be altogether cared for by the government."

John Stuart Mill expressed his views on this subject as follows:

> "Mere contrivance for molding people to be exactly like one another; and as the mold in which it casts them is that which pleases the predominant power in the government—is in proportion as it is efficient and

successful—it establishes a despotism over the mind, leading by natural tendency to one over the body. An education established and controlled by the State should exist, if it exists at all, as one of the many competing experiments carried on for the purpose of example and stimulus to keep the others up to a certain standard of excellence."

ARBITRARY CLASSIFICATION.

The Act in question is an arbitrary and unreasonable classification. It denies to the plaintiffs in error and others similarly situated the equal protection of the law. It denies to that part of the population in Nebraska who speak a foreign language in their homes and use a foreign language as the medium of communication, the right to have their children instructed in a school in the language used in the home. It prevents them from hiring tutors or employing teachers to give religious instruction to their children in the language that is used in the home. It denies to those who happen to use a foreign language as a medium of communication important rights and privileges that are given to those who happen to use the English language.

In Yick Wo vs. Hopkins, 118 U. S. 356, 30 L. ed. 220, Justice Mathews, in discussing the effect of an ordinance which discriminated against Chinese residents of California, said:

> "The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: 'Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' These provisions are universal in their application, to all persons within the territorial juris-

diction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws."

* * * *

"When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true, that there must always be lodged somewhere, and in some person or body, the authority of final decision; and, in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. *But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law* which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the Commonwealth 'may be a government of laws and not of men.' For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

And again:

"The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted, that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which in the eye of the law is not justified. The discrimination is therefore illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution. The imprisonment of the petitioners is therefore illegal, and they must be discharged."

In Truax vs. Raich, 239 U. S. 33, 60 L. ed. 131, Justice Hughes, in discussing the question of classification, said (page 41):

"It is sought to justify this act as an exercise of the power of the state to make reasonable classifications in legislating to promote the health, safety, morals, and welfare of those within its jurisdiction. But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the state to deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure. Butchers' Union S. H. & L. S. L. Co. vs. Crescent City L. S. L. & S. H. Co., 111 U. S. 746, 762, 28 L. ed. 585, 588; Barbier vs. Connolly, 113 U. S. 27, 31, 28 L. ed. 923, 924; Yick Wo vs. Hopkins, *supra;* Allgeyer vs. Louisiana, 165 U. S. 578, 589, 590, 41 L. ed. 832, 835, 836; Coppage vs. Kansas, 236 U. S. 1, 14, 59 L. ed. 441. If this could be refused solely upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words. It is no answer to say, as it is argued, that the act

proceeds upon the assumption that 'the employment of aliens, unless restrained, was a peril to the public welfare.' The discrimination against aliens in the wide range of employments to which the act relates is made an end in itself, and thus the authority to deny to aliens, upon the mere fact of their alienage, the right to obtain support in the ordinary fields of labor, is necessarily involved. It must also be said that reasonable classification implies action consistent with the legitimate interests of the state, and it will not be disputed that these cannot be so broadly conceived as to bring them into hostility to exclusive Federal power. The authority to control immigration—admit or exclude aliens—is vested solely in the Federal government. Fong Yue Ting vs. United States, 149 U. S. 698, 713, 37 L. ed. 905, 913. The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the state would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy is permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be aggregated in such of the states as chose to offer hospitality."

* * * *

(Page 43): "The restriction now sought to be sustained is such as to suggest no limit to the state's power of excluding aliens from employment if the principle underlying the prohibition of the act is conceded. No special public interest with respect to any particular business is shown that could possibly be deemed to support the enactment, for, as we have said, it relates to every sort. The discrimination is against aliens as such in competition with citizens in the described range of enterprises, and in our opinion it

clearly falls under the condemnation of the fundamental law."

In the recent case of Truax vs. Corrigan, 66 L. ed. 132, this court held that the classification was unreasonable and arbitrary. Chief Justice Taft, after citing the leading cases on this question of classification and quoting from them at length, says (page 138):

> "Thus, the guaranty was intended to secure equality of protection not only for all, but against all similarly situated. Indeed, protection is not protection unless it does so. Immunity granted to a class, however limited, having the effect to deprive another class, however limited, of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class."

And again (page 140):

> "Classification is the most inveterate of our reasoning processes. We can scarcely think or speak without consciously or unconsciously exercising it. It must therefore obtain in and determine legislation; but it must regard real resemblances and real differences between things and persons, and class them in accordance with their pertinence to the purpose in hand. Classification like the one with which we are here dealing is said to be the development of the philosophic thought of the world, and is opening the door to legalized experiment. When fundamental rights are thus attempted to be taken away, however, we may well subject such experiment to attentive judgment. The Constitution was intended—its very purpose was—*to prevent experimentation with the fundamental rights of the individual.*"

In Hayes vs. Missouri, 120 U. S. 68, 30 L. ed. 578, the court, speaking through Justice Field, said:

> "The 14th amendment does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

In Barbier vs. Connolly, 113 U. S. 27, 28 L. ed. 923, Justice Field said:

> "Class legislation, discrimination against some and favoring others, is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if, within the sphere of its operation, it affects alike all persons similarly situated, is not within the Amendment."

And again:

> "Not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances, in the enjoyment of their personal rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that, in the administration of criminal justice, no different or higher punishment

should be imposed upon one than such as is prescribed to all for like offenses."

In Missouri vs. Lewis, 101 U. S. 22, 25 L. ed. 989, Justice Bradley, speaking for the court, said:

> "The last restriction, as to the equal protection of the laws, is not violated by any diversity in the jurisdiction of the several courts as to subject-matter, amount, or finality of decision if all persons within the territorial limits of their respective jurisdictions have an equal right in like cases, and under like circumstances to resort to them for redress."

Again:

> "For, as before said, it (i.e., the equality clause) has respect to persons and classes of persons. It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances."

In Gulf vs. Ellis, 165 U. S. 155, 41 L. ed. 668, this court, in discussing the question of classification, said:

> "Classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."

In Magoun vs. Illinois Trust & Sav. Bank, 170 U. S. 283, 42 L. ed. 1037, the court said on page 293:

> "The rule * * * (i.e., of the equality clause) is not a substitute for municipal law; it only prescribes that that law has the attribute of equality of operation, and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relations."

In Southern vs. Greene, 216 U. S. 400, 54 L. ed. 536, this court said:

> "While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis."

This Act abridges the privileges and immunities of the citizens of the United States.

In discussing this question, Judge Brannon said in his work on the Fourteenth Amendment, page 65:

> "We must first take the plain meaning of the words 'privileges and immunities.' Do those words include the thing in question? 'Privileges' is affirmative, positive; 'Immunities,' negative; the one meanng rights, the other exemption from wrongs. Privileges, in general sense, including both those under state and federal citizenship, are those belonging to the citizen, not merely to a person, and would include, for instance, the right to go and come through all the territory under the jurisdiction of the United States on lawful business or pleasure; * * * * to seek happiness and pleasure; to worship God, and attend public worship of God and other public assemblages of the people; to entertain what religious opinions conscience dictates, and worship accordingly * * * * to obtain education in letters, music, art, profession, science, mechanics, or the like; to attend the public schools, no matter by what name known, common, graded or normal schools; academies, colleges or universities; to go to foreign lands; to peaceably assemble and confer upon religion, politics or business; to write and express opinions upon public matters

of business or religion; to petition the government for redress of grievances; freedom of the press."

In United States vs. Cruikshank, 92 U. S. 542, 23 L. ed. 588, Justice Waite said on page 554:

"The Fourteenth Amendment prohibits a state from depriving any person of life, liberty or property, without due process of law; but this adds nothing to the rights of one citizen as against another. *It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society.* As was said by Mr. Justice Johnson, in Bk. vs. Ikely, 4 Wheat. 244, it secures 'The individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.' These counts in the indictment do not call for the exercise of any of the powers conferred by this provision in the Amendment."

And again on page 555 said:

"The Fourteenth Amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not, any more than the one which precedes it and which we have just considered, add anything to the rights which one citizen has under the Constitution against another. The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the Amendment guarantees, but no more. The power of the National Government is limited to the enforcement of this guaranty."

In discussing the words "privileges and immunities," mentioned in Article 4, Section 2, of the Constitution, this court said in Paul vs. Virginia, 8 Wall. 168, 19 L. ed. 357:

> "It was undoubtedly the object of the clause in question to place the citizens of each state upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states are concerned. It relieves them from the disabilities of alienage in other states; it inhibits discriminating legislation against them by other states; it gives them the rght of free ingress into other states, and egress from them; it insures to them in other states the same freedom possessed by the citizens of those states in the acquistition and enjoyment of property and in the pursuit of happiness; and it secures to them in other states the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people, as this."

In Ward vs. Maryland, 12 Wall. 418, 20 L. ed. 449, this court said on page 430:

> "Attempt will not be made to define the words 'privileges and immunities,' or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and proects the right of a citizen of the state to pass into any other state of the Union for the purpose of engaging in lawful commerce, trade or business, without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the courts of the state; and to be exempt from any higher taxes or excises than are imposed by the state upon its own citizens."

In the Slaughter House cases, 16 Wall. 36, 21 L. ed.

394, this court recited the provisions of Articles of Confederation and Article 4, Section 2, of the Constitution and said (page 75):

"There can be but little question that the purpose of both these provisions is the same, and that the privileges and immunities intended are the same in each. In the Articles of Confederation we have some of these specifically mentioned, and enough perhaps to give some general idea of the class of civil rights meant by the phrase.

"Fortunately we are not without judicial construction of this clause of the Constitution. The first and the leading case on the subject is that of Corfield vs. Coryell, decided by Mr. Justice Washington in the circuit court for the District of Pennsylvania in 1823, 4 Wash. C. C. 371.

" 'The inquiry,' he says, 'is, what are the privileges and immunities of citizens of the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are fundamental; *whch belong of right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several states which compose this Union, from the time of their becoming free,* independent, and soverign. What these fundamental principles are, it would be more tedious than difficult to enumerate.' 'They may all, however, be comprehended under the following general heads: Protection by the government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole.'

"This definition of the privileges and immunities of citizens of the states is adopted in the main by this court in the recent case of Ward vs. Maryland, 12 Wall. 430, 20 L. ed. 452, while it declines to undertake an authoritative definition beyond what was necessary to

that decision. The description, when taken to include others not named, but which are of the same general character, *embraces nearly every civil right for the establishment and protection of which organized government is instituted. They are, in the language of Judge Washington, those rights which are fundamental.* Throughout his opinion, they are spoken of as rights belonging to the individual as a citizen of a state. They are so spoken of in the constitutional provision which he was construing. And they have always been held to be the class of rights which the state governments were created to establish and secure."

In Arver vs. United States, 245 U. S. 366, 62 L. ed, 349, Justice White in discussing the effect of the 14th amendment said:

"In reviewing the subject we have hitherto considered it as it has been argued from the point of view of the Constitution as it stood prior to the adoption of the 14th Amendment. But, to avoid all misapprehension, we briefly direct attention to that Amendment for the purpose of pointing out, as has been frequently done in the past, how completely it broadened the national scope of the government under the Constitution by causing citizenship of the United States to be paramount and dominant instead of being subordinate and derivative, and therefore operating, as it does, upon all the powers conferred by the Constitution, leaves no possible support for the contentions made, if their want of merit was otherwise not so clearly made manifest."

In United States vs. Wheeler, 254 U. S. 281, 65 L. ed. 270, Chief Justice White says, p. 299:

"Nor is the situation changed by assuming that, as a state has power, by depriving its own citizens of the right to reside peacefully therein and to free ingress thereto and egress therefrom, it may, without violating the prohibitions of article 4 against discrimination,

apply a like rule to citizens of other states, and hence engender, outside of article 4, a Federal right. This must be so, since the proposition assumes that a state could, without violating the fundamental limitations of the Constitution other than those of article 4, paragraph 2, enact legislation incompatible with its existence as a free government, and destructive of the fundamental rights of its citizens; and furthermore, because the premise upon which the proposition rests is state action, and the existence of Federal power to determine the repugnancy of such action to the Constitution—matters which, not being here involved, are not disputed."

The Enabling Act passed by Congress on April 19, 1864, admitting Nebraska into the Union, required the State, as a condition precedent to admission to the Union, to prepare a constitution and among other things in Section 4 provided:

> "That said (state) Constitution shall provide by an article forever irrevocable, WITHOUT THE CONSENT OF THE CONGRESS OF THE UNITED STATES, * * * * Second, that perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship."

It is not clear just what effect this provision has. It is clear that Congress had the right to prescribe what should be included in the constitution and if the state did not comply with the suggestion of Congress, it would prevent the state from coming into the Union. What Congress sought to do in the foregoing provision was to require the people of Nebraska to guarantee religious liberty by a provision that could not be changed by the people of Nebraska without the consent of the United States. We have not been able

to find any decision that would be helpful in ascertaining its meaning or effect.

Irrespective of this provision, the right of religious liberty is one of the immunities and privileges that is protected by Section 1 of the 14th Amendment. The Federal Government has the power and the right to forbid a state from interfering with the free exercise of religion. State legislation denying religious liberty is a violation of both the letter and spirit of the 14th Amendment; it is a deprivation of a person's liberty without due process of law; it denies persons the equal protection of the laws; it abridges the privileges and immunities of citizens of the United States.

The 14th Amendment protects the citizen against adverse action by the state of those privileges and immunities that were protected against adverse action by the Federal Government in the first eight amendments of the Constitution of the United States.

In discussing the question of religious liberty, Cooley in his "Principles of Constitutional Law" third edition, page 224, says:

> "The Constitution (Federal) as originally adopted declared that 'no religious test shall ever be required as a qualification to any office or public trust under the United States.' By amendment it was further provided that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.' Both of these provisions, it will be seen, are limitations upon the powers of Congress only. Neither the original Constitution nor any of the early amendments undertook to protect the religious liberty of the people of the states against the action of their respective state governments. The fourteenth amendment is perhaps BROAD ENOUGH TO GIVE SOME SECURITIES IF THEY SHOULD BE NEEDFUL."

PROPERTY RIGHTS.

In Adams vs. Tanner, 244 U. S. 590, 61 L. ed. 1335, this court held that an act making it lawful for persons to enter into agreement with employment agencies and sought to penalize all persons who maintained or patronized these agencies was a violation of the 14th Amendment and therefore unconstitutional. Justice Reynolds, speaking for the court said:

> "Because abuses may, and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its suppression would be in the public interest. Skilfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, the fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked.
>
> The general principles by which the validity of the challenged measure must be determined have been expressed many times in our former opinion. It will suffice to quote from a few."

In Allgeyer vs. Louisiana, 165 U. S. 578, 41 L. ed. 832, this court held invalid a statute of Lousiana which undertook to prohibit a citizen from contracting outside the state for insurance on his property lying therein, because it violated the liberty guaranteed him by the 14th Amendment.

In discussing this question, Justice Peckham said:

"The liberty mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

And again on page 592:

"In the privilege of pursuing an ordinary calling or trade and of acquiring, holding and selling property must be embraced the right to make all proper contracts in the relation thereto, and although it may be conceded that this right to contract in relation to persons or property or to do business within the jurisdiction of the state may be regulated and sometimes prohibited when the contract or business conflict with the policy of the state as contained in the statutes, yet the power does not and cannot extend to prohibiting the citizens from making contracts of the nature involved in this case outside of the limits and jurisdiction of the state, and which are also to be performed outside of such jurisdiction; nor can the state legally prohibit its citizens from doing such an act as writing this letter of notification, even though the property which is the subject of the insurance may at the time when such insurance attaches be within the limits of the state. The mere fact that a citizen may be within the limits of a particular state does not prevent his making a contract outside its limits while he himself remains within it."

In McLean vs. Arkansas, 211 U. S. 539, 53 L. ed. 315, Justice Day in discussing the power of the legislature to regulate contracts, said:

"It is also true that the police power of the state is not unlimited, and is subject to judicial review; and,

when exerted in an arbitrary or oppressive manner, such laws may be annulled as violative of rights protected by the Constitution. While the courts can set aside legislative enactments upon this ground, the principles upon which such interference is warranted are as well settled as is the right of judicial interference itself.

The legislature being familiar with local condition, is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in question is unmistakably and palpably in excess of legislative power."

And again:

"If there existed a condition of affairs concerning which the legislature of the state, exercising its conceded right to enact laws for the protection of the health, safety, or welfare of the people, might pass the law, it must be sustained; if such action was arbitrary interference with the right to contract or carry on business, and having no just relation to the protection of the public within the scope of legislative power, the act must fail."

In Booth vs. Illinois, 184 U. S. 425, 46 L. ed. 623, Justice Harland, in discussing the right of the legislature to regulate and prohibit contracts, said:

"If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the state thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law."

In Lawton vs. Steele, 152 U. S. 133, Judge Brown said on page 137:

> "The legislature may not under the guise of protecting the public interest, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to supervision of the courts."

In the recent case of Spann vs. City of Dallas, 225 S. W. 513, 19 A. L. R., 1387, the court said:

> "A law which assumes to be a police regulation, but deprives the citizen of the use of his property under the pretense of preserving the public health, safety, comfort, or welfare, when it is manifest that such is not the real object and purpose of the regulation, will be set aside as a clear and direct invasion of the right of property without any compensating advantages. Cooley, Const. Lim. 248."

In Roraback vs. Motion Picture Machine, 140 Minn. 481, the right of the owner of a moving picture show to operate a motion picture machine in his own theatre was involved. The labor union insisted that he had no right to work at his own place and because of this the labor union undertook to advertise his show as a place unfair to organized labor. The owner made application for an injunction and the court sustained his right to this injunction. In passing on this question, the court said:

> "If men, either singly or in combination, may lawfully injure or destroy the business of another for the purpose of compelling him not to work in such business himself, it will have far-reaching consequences. Such a doctrine would limit the field of business to those who

have sufficient capital to carry on a business without becoming operatives therein themselves, and would debar those who have little or no capital, except their personal skill and ability, from seeking to better their condition by engaging in business on their own account. Such a doctrine means that a machinist who starts a machine shop may lawfully be prevented from working therein as a machinist; that a carpenter who starts a carpenter shop may be required to have all his work done by others; that a barber who opens a barber shop must cease to work as a barber. It means that the man in any occupation who starts in business for himself, relying upon his personal skill and ability to attain success, must forego the right to profit by his own skill, at the arbitrary behest of another, or see his business ruined. Such is not the law. The right of every person to work in his own business is a fundamental right, guaranteed to him by the Bill of Rights in the Constitution and by the 14th Amendment to the Federal Constitution, and any attempt to deprive him of that right is necessarily unlawful. Truax v. Raich, 239 U. S. 33, 60 L. Ed. 131 L. R. A. 1916 D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917B, 283. However far members of an organization may go in an attempt to force an employer to employ members of the organization, an attempt to force him to desist from working himself, in his own business is clearly an invasion of the right secured by the Constitution." (140 Minn. 481, 168 N. W. 766, 169 N. W. 529, 3 A. L. R. 1290-1293).

In the case of Columbia Trust Co. v. Lincoln Institute, 138 Ky. 804, 129 S. W. 113, 29 L. R. A. (N. S.) 53-57, the court said:

> "In the case of Com. v. Fowler, 96 Ky. 171, 33 L. R. A. 839, 28 S. W. 787, this court said: 'Everyone has the right to follow an innocent calling without permission from the government. He may do with his own whatever he pleases, so that he injure no one else. We

agree with learned counsel that "the doctrine of legislative permission, as a condition precedent to the conduct of any useful or harmless business, is grossly repugnant to those obvious principles of human right which lie at the foundation of just government among men." So, then, without governmental interference or consent, we say the farmer may till his soil, the merchant may buy and sell, the lawyer and the doctor practice their professions, and the druggist and pharmacist compound their medicines.' In the case of Com. v. Bacon, 13 Bush, 210, 26 Am. Rep. 189, there was involved the validity of a statute which provided that it should be unlawful for anyone, without the consent of the directors of the Bourbon County Agricultural Society, to open a lot, stable, shed, or other place during the continuance of the society's fairs, for the purpose of receiving, for pay, horses or vehicles of any kind; or for any person or persons to permit the use of his lot, stable, shed or place for any such purposes. Among other things, this court said, in the opinion, holding the act invalid: 'The effect of the act then is to restrict the right of one person to use and enjoy his property in a particular manner, that another may use his in that manner to greater profit than he could if each was left free to use his own as he pleased. In this country, where the right of the citizen to acquire, hold and enjoy property is guaranteed by the fundamental law, it would seem that the statement of the proposition is enough to refute it.' "

INTERVENOR'S PROPERTY RIGHTS.

The intervenor has contributed to the building of St. Francis school and to its support. He has invested in the neighborhood of $500 in this school and has paid fifty cents per month for each child that attends. This school is used to assist himself and wife in training and educating his children. He and other people of Polish descent contribute to and maintain this school for the purpose of using the Polish language to educate their children in English and to use said language to instruct their children in religion until they are able to understand English. This school has a course of study substantially equivalent to that of the public schools in the city of Omaha. The children that graduate from this school are the equal in educational qualifications to the children who graduate from the 8th grade in the public schools. These children are raised in Polish homes where no English is spoken. They are so trained that when they leave this school they go into the high school without an examination. An institution that can take a child that lives in a home where only Polish is spoken and can train it in the first eight years in the English language so that it can enter the high school of the city of Omaha without an examination is a useful instutition. It is a necessary part of the educational life of this nation. It should be encouraged instead of being discriminated against. The witness Kalamaji testified that if the patrons of this school could not use Polish, there would be no reason for its existence to prevent the use of the Polish language in the school and will destroy its value and impair its usefulness.

COMMON LANGUAGE.

Section 1 of the act in question requires the study and use of the English language in all schools. This is a sensible regulation well within the police power and one that meets with the hearty approval of all who understand the necessity of learning and understanding the language in general use in our country. This is a constructive and sensible regulation that should have been adopted when our nation began.

Requiring the youth of America to study and use the English language is a useful and sensible regulation, but prohibiting the youth of America from studying and using a foreign language is not only unconstitutional, but it is senseless and silly.

It is inferred that to be a patriotic citizen it is necessary to study and use the English language. The advantages of the use of a common language are apparent. In all recorded time, there never has been a nation that has had an exclusively common language. The great nations that have existed and those now in existance permit the study and use of different languages and with but few exceptions in all history there has never been an effort made to prohibit the study and use of a foreign language, and those instances were where the conqueror imposed his will upon the conquered.

The Republic of Switzerland has maintained its national integrity in war-torn Europe without a common Swiss language. The Swiss people use German, Italian and French. All of these languages are official. There is no doubt regarding the patriotism of the Swiss.

The history of mankind discloses many varieties and

kinds of arbitrary legislation and administration. But, in the intolerant past language prohibition has rarely been enforced. Germany undertook to force Poland to use the German language, and Russia undertook to compel the part of Poland in Russia to use a language other than Polish. These are the two most conspicuous examples of language prohibition that history records. It seems strange that when Germany and Russia, the last survivors of the dangerous doctrine of state absolutism, have practically gone out of business that Nebraska would adopt as part of its laws this most odious, arbitrary and unreasonable exercise of state absolutism.

PROHIBITIONS OF SECTION 2.

The purpose of Section 2 is to prohibit any person from teaching any subject in a foreign language in a school. One of the effects is to prevent any person from receiving instruction in any subject in a foreign language in a school. That is its real intent and purpose.

To prohibit the people of the State of Nebraska from acquiring information and knowledge through the medium of a foreign language in a school is a capricious, unreasonable and arbitrary use of the police power. It deprives the citizen of fundamental rights; it deprives the citizen of his liberty without due process of law; it deprives him of his constitutional immunities and privileges. This section is not a regulation of the use of foreign language. It is an absolute prohibition against the use of foreign language for any purpose in the schools of Nebraska.

This section seeks to close all the avenues of knowledge to the people of Nebraska except such that are open through

the use of the English language. The important contributions made to the knowledge of the world in the languages of Continental Europe cannot be used in Nebraska unless the books and manuscripts in which this knowledge is contained have been translated into the English language.

This act assumes that it is dangerous to the welfare of the state to study poetry in the languages of Virgil, Homer, Dante or Goethe. In order to further the public good, it prevents the study in the original tongue of the novels of Schiller, Balzac, Cervantes and Hugo.

Its purpose is to make the people of Nebraska patriotic, by prohibiting them from studying music in the language of Bach, Beethoven, Handel, Mozart and Wagner; to preserve the public health Nebraskans must not study history in the language of Plutarch, Heroditus or Caesar.

The students of philosophy and theology are denied the right to study in the original tongues, the works of St. Thomas Aquinus, St. Augustine, Luther, Kant and Voltaire.

This act makes it unlawful for the students of science to study the original works of Libnitz, Grotius, Michael Angelo and Gallileo. The lawyers who undertake the study of the original Code Napoleon are subject to prosecution; the student of the drama who would study the original of Moliere is subject to a jail sentence of thirty days.

If the Act in question is valid, the ambitious seekers after truth, who desire to study in a school in the original languages the Divine Comedy of Dante, the Dialogues of Gallileo, or the Philippics of Demosthenes, will be required to engage in this dangerous and hazardous occupation outside the territorial confines of Nebraska.

PROHIBITIONS OF SECTION 3.

Section 3 of the Act in question provides that languages other than English may be taught as languages only "after a pupil shall have attained and successfully passed the eighth grade, as evidenced by a certificate of graduation issued by the County Superintendent of the County, or the City Superintendent of the City in which the child resides." It is difficult to conceive of a more arbitrary classification than these provisions propose. No one can study a foreign language until he has passed the eighth grade. Even though he has passed the eighth grade, he cannot study a foreign language until he has a certificate issued by the County Superintendent or the City Superintendent. No matter what his attainments might be, nor what his education might be, the only way that a person in Nebraska can study a foreign language is to have a certificate from the proper superintendent stating that he has successfully passed the eighth grade.

The provisions of Section 3 are not directed against the teaching of a foreign language, but attempts to prescribe the place where it should be taught. A foreign language is entirely meritorious and wholesome in the home, and when taught by the parents. The act on its face admits that the teaching of foreign languages is not contrary to good morals or the public good. The study of foreign languages is in harmony with the public weal if done in the home; but it is unlawful if done in any school.

In Wick Wo vs. Hopkins, 118 U. S. 356, the operation of a laundry was prohibited in buildings having certain characteristics. The removal of dirt by washing, like the removal of ignorance by teaching, has very generally been

accepted as a thing undeserving of legislative reprobation. If the result is distinctly good, of what consequence is the place where the result is produced? For the worship of God, all space is a temple, and all seasons summer. If the teaching of a foreign language is detrimental to the public welfare, it is equally so whether taught in a school or in the home.

The quality of the act is not controlled by the place where it is done.

Teachers have in the past,—one of them a philosopher, another a God,—been tried, condemned and executed for teaching, but this, so far as history shows, is the first instance in which teaching what is not only innocuous but good, beneficial and wholesome, is made criminal by reason of the place where it is carried on.

IS TEACHING FOREIGN LANGUAGE HURTFUL?

The study of languages is an independent branch of knowledge and has always and everywhere been so considered. With a few exceptions, the study of foreign languages has been encouraged by governments. So, when the Nebraska Bill of Rights declares that "religion, morality and knowledge are essential to good government" and declares it to be "the duty of the legislature to pass suitable laws to encourage schools and the means of instruction," it condemns the inhibition against the teaching of languages, other than English.

The study of languages is the study of history and literary style; it is the means of reproducing the past; it also prepares us to carry on more efficiently in the present

and future diplomatic communication and essential intercourse with all the nations of the earth.

In passing this Act, Nebraska is attempting to give herself an odious pre-eminence among the powers that have in the past enacted freak legislation. If this statute is sustained, it will, in the future, be cited as one of the legal monstrosities. It must be admitted that if the study of a foreign language is not an evil at all, then there is no authority in the police power or elsewhere for the enactment of the law in question. If the study of a foreign language is so dangerous to the public interest that it gives the state authority under its police power to suppress it, then it should be suppressed everywhere. If it is bad to teach foreign languages in schools, it is necessarily bad to teach them in the homes. The attempt to suppress the teaching of foreign languages in schools and to allow them to be taught in the homes is an indefensible classification. The line of demarkation between the classes prescribed by the law is arbitrary and capricious. The effort to prescribe a classification on the place where foreign languages may be studied is illogical, arbitrary and capricious.

In Meyer vs. State, 187 N. W. 101, the Supreme Court of Nebraska passed on one phase of language prohibition, and sustained the conviction of a teacher who read Bible stories in German between 1:00 and 1:30 P. M. on school days in a parochial school. The majority opinion seems to be based on the theory that it was proper to exercise the police power to preserve the public health. "Hard cases make bad law."

Under this construction, any subject but foreign languages can be taught outside school hours in a school with-

out injuring the public health, but the teaching of French, Spanish or German has a disastrous effect on the public health. Further discussion along this line leads to the absurd. In the minority opinion Justice Letton announced the correct statement of the law, which is as follows:

> "I am unable to agree with the doctrine that the Legislature may arbitrarily, through the exercise of the police power, interfere with the fundamental right of every American parent to control, in a degree not harmful to the state, the education of his child, and to teach it, in association with other children, any science or art, or any language which contributes to a larger life, or to a higher and broader culture.
>
> "Educators agree that the period of early childhood is the time that the ability to speak or understand a foreign, or a classic, language is the most easily acquired. Every parent has the fundamental right, after he has complied with all proper requirements by the state as to education, to give his child such further education in proper subjects as he desires and can afford. As was pointed out in Nebraska vs. McKelvie, 187 N. W. 92, the legitimate object of the statute has been accomplished when the basic and fundamental education of every child in the state has been acquired in the English language, nstead of in the language of a foreign country.
>
> "The state has the right to manage and control in all particulars schools maintained by taxation; to place other schools under state supervision and to require the same general standards; but it has no right to prevent parents from bestowing upon their children a full measure of education in addition to the state required branches. Has it the right to prevent the study of music, of drawing, of handiwork, in classes or private schools, under the guise of police power? If not, it has no power to prevent the study of French, Spanish, Italian, or any other foreign or classic language, unless

such study interferes with the education in the language of our country, prescribed by the statute."

See dissenting opinion in case of Nebraska vs. McKelvie, 187 N. W. 927.

AN ACT TO ENCOURAGE IGNORANCE.

American literature fairly reeks with the assertion, in one form or another, that the palladium of our institutions—the surest safeguard for the protection of our liberties—is education,—liberal education, which, of course, includes the study of languages. The present American life demands not only technical education, but an education which develops the mind, and enables those possessing it to take a broad comprehensive view of the affairs of the state, the nation, and the world. Education should not be confined to the use of any particular language, nor should the place in which education is secured be limited and prescribed.

In the face of this statement, it is strange, indeed, that one of the most enlightened states of this nation passed the act in question which should, with due regard to actual truth, be entitled "An Act to Encourage Ignorance." The title which it bears is more euphemistic, but far less indicative of the scope and purpose of the act. This act narrows liberty,—it narrows it without reason. It has an alien conception and has upon it the suggestion and dank odor of tyranny. The impulse to resist it is spontaneous. Language prohibition has been justified as a more or less effective governmental policy for holding in subjection a conquered people, but that base reason does not exist here. Those affected by this act are our own people. By their

own volition they became a part of us and are content and happy to remain so.

This case must be dealt with in view of historic facts, not pleaded, but clearly within judicial cognizance. This nation was not in its origin, nor during the stages of its growth, an Anglo-Saxon blend, but rather an aggregation of alien peoples having different traditions, ideals, creeds, aspirations and national impulses. The national groups which make up the cosmopolitan people of the United States did not come uninvited. They were asked to come and bring with them all their physical, mental, moral and spiritual endowments—their racial assets and liabilities,—their brain and brawn,—their customs and practices,—their love of freedom,—their conception of freedom; civil and religious,—their language and every other attribute stamped upon them through the centuries since their first out-swarming from continental Europe.

Those from continental Europe were a considerable part of the total population for whose benefit and protection, constitutions were adopted. They had an influential part in the making of those constitutions and they did not, of course, forget themselves and their own national characteristics in making the bedrock laws they were to live under. They were sturdy men, strong in mind and strong of body; they had breadth of vision and thought soundly, and it may be assumed that they would not have assented to, or accepted, the *narrow, shriveled and devitalized definitions of constitutional liberty that would permit the enactment of the act in question.*

VERBOTEN.

The basic theory of the American government is regulation rather than prohibition. The signs along the highway of our national life direct rather than prohibit. Experience has shown that you cannot make men law-abiding and liberty-loving with penal statutes. The American theory is to make and enforce laws in such a way that the people will love, not fear, the government. We place Verboten signs at places that are dangerous to the individual citizen. We are slow to curtail the liberty of the citizen for the benefit of the state. THE MOST DRASTIC KIND OF PROHIBITION SO FAR PROPOSED IS LANGUAGE PROHIBITION. Its purpose is to prohibit the use and study of a lawful means of communication.

There is serious dissent on the proposition that a majority have a right to prohibit a minority from doing things that relate to the individual's personal relations with himself and his family.

Language prohibition is the most drastic and far reaching step which has been attempted in dealing with the personal rights of the citizen. Outside of the recent cases decided in Iowa and Ohio, there are no adjudicated cases on this class of legislation. Language prohibition seems to be a product of "war psychology." A species of Chauvinistic hysteria. About the time that the nations who used prohibitions laws and Verboten signs to limit and deny the rights of their citizens passed out of existence the most odious form of prohibition appeared in the United States under the guise of language prohibition.

The intervenor Siedlik and his neighbors fled from where state absolutism was a fact and language prohibition

the plan. They came to free America and have become an important part of its life. They have built private schools to assist them in educating their children to be law-abiding, God-fearing, patriotic citizens. The Act in question seeks to prevent these people from studying the language used in their homes.

STATE ABSOLUTISM.

The school of thought that believes that the first concern of Government is the state, proceed on the theory that the state has the power and the right to do anything it deems necessary. In the old days it was said "the king can do no wrong." In these modern days it is said that a majority of the legislature can do no wrong.

It is urged that the will of a transient legislative majority when exercising the police power ought not be questioned by the judiciary.

By a bare majority the legislative branch of government can and does start in motion that undefined, unascertained and limitless agency known as "the police power." Through it the legislative branch seeks to lodge powers in the state. So long as constitutional government exists there must and will be a conflict between the legislative and judicial branches of our government regarding the control that the legislative branch can exercise over our citizens by use of the police power. When the judiciary ceases to stand guard and repel all invasions of the constitutional rights of the citizen, constitutional government is at an end.

One of the lessons that has been taught by the war is that State absolutism is a failure. We have learned that

the Government which accords the largest measure of personal liberty to the citizen is the strongest. Our country has accorded, in the past, more liberty to its citizens than any other nation in the world. In the world war it was demonstrated that the United States was the strongest and most efficient nation in the world.

The United States did its part to overcome by physical force that theory of Government which has for lack of a better name been designated as Prussianism. *Mankind has gained very little in the world war if the Prussian theory of State absolutism has only been temporarily overthrown by physical force. If the Prussian conception of the rights of the State to do whatever those in power deem necessary to be done, without regard to constitutional limit, is still dominant in the world, then the mental conceptions and intellectual activities of the Prussian will continue to influence and direct the world.*

POWER OF STATE.

The right of the State to regulate public schools maintained by taxes is broader than its right to regulate private schools maintained by the funds of those who patronize these schools. The State cannot exercise the same control over private schools that it does over public schools. The State has power to outline a complete course of study in public schools and to prevent the study of any subjects not in that course of study. The State has power to require private schools to maintain a course of study substantially equivalent to that used in the public schools. THE STATE HAS NO POWER TO PREVENT THE PUPILS IN PRIVATE SCHOOLS FROM STUDYING OPTIONAL STUDIES

WHICH ARE OUTSIDE AND IN ADDITION TO THE COURSE OF STUDY PRESCRIBED BY THE STATE. For example, the State could prevent the teaching of dancing in public schools. The State has no power to prevent private schools from teaching dancing as an optional study in a private school.

It is suggested that, because the State has a right to pass a compulsory school law, it has complete control over the subject of education and can prescribe what shall not be taught in private institutions. This conception is basically and fundamentally wrong. The individual has rights superior to the State. The individual has rights that the State cannot take away by an exercise of the police powe While the State has the right to pass a compulsory school law, it does not have the right or power to compel every child within its borders to graduate from the high school or attend the State University. The right to prescribe a minimum of education under the police power does not give the State authority to make the children living in the State the wards of the State.

Will it be seriously urged that because the State has the right to pass a pure food law for the purpose of inspecting food, so that there will be nothing poisonous or deleterious sold, that it has entire control of the subject of foods and can prescribe and enforce a bill of fare that every citizen must use? The police power of the State can be exercised in a limited way on many subjects, but it goes without saying that it does not give the State complete control over the subject. As was said by Justice Holmes in the case of Hudson vs. McCarter, 209 U. S. 349, 52 L. ed. 828, on page 832:

"All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached. The limits set to property by other public interests present themselves as a branch of what is called the police power of the state. The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decision that this or that concrete case falls on the nearer or farther side. For instance. the police power may limit the height of buildings in a city, without compensation. To that extent it cuts down what otherwise would be the rights of property. But if it should attempt to limit the height so far as to make an ordinary building lot wholly useless, the rights of property could prevail over public interest, and the police power would fail. To set such a limit would need compensation and the power of eminent domain."

And as was said in the case of Noble State Bank vs. Haskell, 218 U. S. 104, 55 L. ed. 112, on page 117:

"It is asked whether the state could require all corporations or all grocers to help to guarantee each other's solvency, and where we are going to draw the line. But the last is a futile question, and we will answer the others when they arise. With regard to the police power as elsewhere in the law, lines are pricked out by the gradual approach and contact of decision on the opposing sides. Hudson County Water Co. vs. McCarter, 209 U. S. 349, 52 L. ed. 828, 831, 27 Sup. Ct. Rep. 529, 14 A. & E. Ann. Cas. 560. It will serve as a datum on this side, that, in our opinion, the statute before us is well within the State's constitutional power, while the use of the public credit on a large scale to help individuals in business has been held to be beyond the

line. Citizens' Loan Asso. vs. Topeka, 20 Wall. 655, 82 L. ed. 455; Lowell vs. Boston, 111 Mass. 454, 15 Am. Rep. 39."

In the instant case, the right to study optional subjects in private schools in addition to the regular curriculum of the public schools is outside of the control of the police power. It is so far outside of that power that there can be no question of the unconstitutionality of any law that attempts to prohibit the study of these optional subjects and the use of these optional subjects in these schools.

In Nebraska District vs. McKelvie, et al, 104 Neb. 93, 175 N. W. 531, the court, in passing on a language law, said on page 534:

> "Philosophers long ago pointed out that the safety of a democracy, or republic, rests upon the intelligence and virtue of its citizens. 'The safety of the people is the supreme law.' The concept that the state is everything, and the individual merely one of its component parts, is repugnant to the ideals of democracy, individual independence, and liberty expressed in the Declaration of Rights, and afterwards established and carried out in the American Constitution. The state should control the education of its citizens far enough to see that it is given in the language of their country, and to insure that they understand the nature of the government under which they live, and are competent to take part in it. Further than this, education should be left to the fullest freedom of the individual."

And again on page 535 said:

> "If the law means that parents can teach a foreign language, or private tutors employed by men of means may do so, but that poorer men may not employ teachers to give such instruction in a class or school, it would

be an invasion of personal liberty, discriminative, and void, there being no reasonable basis of classification; but if such instruction can be given in addition to the regular course, and not so as to interfere with it, then equality and uniformity results, and no one can complain."

If the doctrine announced in the case of Pohl vs. Ohio, 102 N. E. 20, is followed, it means that whatever is passed by the legislature is the law. If the courts are bound to presume that the facts before the legislature warranted the exercise of the police power, then there are no constitutional limits on the legislature while exercising that power. The principle announced in the case, if applied, will make our constitutions obsolete and historic documents that will be ornate and pretentious, but not useful. When the courts abdicate their function of declaring laws unconstitutional, our nation will be, as has been wittily said, "merely an economic entity."

PARENTS' RIGHTS.

The parents not only have a right to maintain a private school in which to educate their children in such subjects as they think proper, but they have the right to exercise discretion as to the subjects a child shall study in the public schools. In State vs. School District, 31 Neb. 552, this Court said:

> "The school trustees of a high school have authority to classify and grade the scholars in the district and cause them to be taught in such departments as they may deem expedient; they may also prescribe the courses of study and text books for the use of the school, and such reasonable rules and regulations as they may think needful. They may also require prompt attend-

ance, respectful deportment and diligence in study. The parent, however, has a right to make a reasonable selection from the prescribed studies for his child to pursue, and this selection must be respected by the trustees, as the right of the parent in that regard is superior to that of the trustees and the teachers."

In discussing this question, Judge Maxwell said in the opinion:

"Now, who is to determine what studies she shall pursue in school; a teacher who has a mere temporary interest in her welfare, or her father, who may reasonably be supposed to be desirous of pursuing such course as will best promote the happiness of the child? The father certainly possesses superior opportunities of knowing the physical and mental capabilities of his child. It may be apparent that all the prescribed course of studies is more than the strength of the child can undergo; or he may be desirous, as is frequently the case, that his child, while attending school, should also take lessons in music, painting, etc., from private teachers. This he has a right to do. The right of the parent, therefore, to determine what studies his child should puruse, is paramount to that of the trustees or teacher."

In the recent case of State vs. Ferguson, 144 N. W. 1039, this Court followed the doctrine announced in State vs. School, *supra*, announced the principle as follows in the third and again in the fourth syllabus:

"The public schools of this State are entitled to the earnest and conscientious support of every citizen. To that end the school authorities should be upheld in their control and regulation of our school system; but their power and authority should not be held to be unlimited. They are required to further the best interests

of their scholars, with a due regard to the natural and legal rights of the parents of such children.

"And when a parent makes a reasonable selection from the course of studies which has been prescribed by the school authorities and requests that his child may be excused from taking the same, the request should be granted. If the request be denied and the child is expelled or suspended for refusal to continue such study, mandamus will like to compel reinstatement."

If a parent has a right to use discretion regarding the regular course prescribed in the public schools, it necessarily follows that the parent has more discretion and greater control in a school supported by his private funds.

CONCLUSION.

This intolerant act grew out of the hatred, national bigotry and racial prejudice engendered by the World War. It should not be sustained as a constitutional exercise of the police power.

Respectfully submitted,

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Omaha, Nebraska, October 3, 1922.